121-163

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1301.

THE NATIONAL NEWARK BANKING COMPANY,
APPELLANT,

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF
NEWARK, AND A. JUDSON CLARK, RECEIVER OF TAXES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEW JERSEY.

FILED NOVEMBER 29, 1886.

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1 (Filed November 23, 1886.)

United States Circuit Court for the District of New Jersey. In Equity.

THE NATIONAL NEWARK BANKING COMPANY, Appellant,

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. JUDSON CLARK, Receiver of Taxes, Appellees.

To the judges of the United States circuit court for the district of New Jersey:

And now, on this 23d day of November, 1886, into open court comes The National Newark Banking Company, by its counsel and solicitors, Charles W. Wells, Geo. W. Jenkins, and John W. Taylor, Esqs., and shows to the court that the value of the controversy and of the subject-matter in this suit exceeds the sum of five thousand dollars, exclusive of costs, all of which doth appear of record in the suit by the pleadings therein, and the said complainant does, in open court, now take an appeal from the final decree rendered and made by this said United States circuit court, and prays that an appeal may be allowed him from the final decree made and rendered in this suit by this court to the Supreme Court of the United States.

2 (Filed November 23, 1886.)

United States Circuit Court for the District of New Jersey. In Equity.

THE NATIONAL NEWARK BANKING COMPANY, Appellant,

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. JUDSON CLARK, Receiver of Taxes, Appellees.

And now, on this 23 day of Nov., 1886, the complainant in this suit in equity having, in open court, this day taken and prayed an appeal from the final decree heretofore made and rendered in this suit—

Ordered, That said appeal be granted and allowed The National Newark Banking Company to the Supreme Court of the United States from the final decree made in this suit dismissing the bill of complaint, with costs against the complainant.

WM. BUTLER, *Judge.*

3 (Filed November 23, 1886.)

United States Circuit Court for the District of New Jersey. In Equity.

THE NATIONAL NEWARK BANKING COMPANY, Appellant,

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. JUDSON CLARK, Receiver of Taxes, Appellees.

Know all men by these presents that we, The National Newark Banking Company and James B. Pinneo and Philip W. Crater, of the city of Newark, county of Essex, and State of New Jersey, are held and firmly bound unto The Mayor and Common Council of the City of Newark and to A. Judson Clark, receiver of taxes, in the full sum of one thousand dollars, to be paid to the said Mayor and Common Council of the City of Newark and to A. Judson Clark, receiver of taxes, and their successors in office or assigns; to which payment, well and truly to be made, we bind ourselves, associates, and successors, and our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this nineteenth day of November, one thousand eight hundred and eighty-six (1886).

4 Whereas lately at a circuit court of the United States for the district of New Jersey, in a suit in equity depending in said court between The National Newark Banking Company and The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver of taxes, a final decree was rendered against the said The National Newark Banking Company, and the said The National Newark Banking Company having taken an appeal to the Supreme Court of the United States to reverse the final decree in the aforesaid suit, which said appeal was allowed:

Now, the condition of the above obligation is such that if the said The National Newark Banking Company shall prosecute its appeal to effect and answer all costs if the said The National Newark Banking Company fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

NATIONAL NEWARK BANKING COMPANY,
[OFFICIAL SEAL.] By JAS. B. PINNEO, *Prest.*
JAS. B. PINNEO. [SEAL.]
P. W. CRATER. [SEAL.]

Sealed and delivered in presence of—
JOHN W. TAYLOR.

The words "against" and "plea" having been interlined and two words cancelled before execution.

Approved:

WM. BUTLER.

5 (Filed Oct. 23, 1885.)

In the Circuit Court of the United States for the district of New Jersey. In Equity.

THE NATIONAL NEWARK BANKING COMPANY

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. JUDSON CLARK, Receiver of Taxes.

To the honorable the judges of the circuit court of the United States for the district of New Jersey, sitting in equity:

The National Newark Banking Company, an association organized under the act of the Congress of the United States approved June 3d, 1864, commonly called the "national bank act," and the supplements thereto, which association is located in the city of Newark and State of New Jersey, brings this its bill of complaint against The Mayor and Common Council of the City of Newark, a municipal corporation situated in said State of New Jersey, and A. Judson Clark, receiver of taxes, an officer of said city, and a resident of said city and of said State of New Jersey; and thereupon your orator complains and shows:

6 1. That on the first Wednesday of May, A. D. 1885, it had a capital of $500,000 and a surplus fund of $200,000; that a portion of said capital and surplus fund was at that time invested in bonds of the United States of the par value of $500,000 and of a market value and cost largely exceeding said sum; that its shares of stock were each of the par value of $50, and were of the number of 10,000, and were then held by 321 persons and corporations, 50 of whom, owning 1,506 shares, were residents of States other than the State of New Jersey; 156, owning 5,716 shares, were residents of said city of New York, and the remainder were residents of the State of New Jersey, but not of said city.

2. And your orator further shows that under the laws of the State of New Jersey applicable thereto it was the duty of the board of assessment and revision of taxes in the city of Newark, between the first Wednesday of May and the second Monday in August, in the year 1885, to value and assess all taxable property, real and personal, within the said city, and to set down the same in the assessment duplicate in the form prescribed by law.

3. And your orator further shows that the statutes of the State of New Jersey provide for the assessment of the shares of National banking associations to the holder thereof, if he is a resident of the State of New Jersey, in the township or ward where he resides, and in case the owner of the said shares is not a resident of the State of New Jersey, then that the same shall be assessed to the said associations, and that the said associations shall pay the amount of the tax assessed with relation to the shares of the stock of the said owners who shall be non-residents of the State of New Jersey.

4. Your orator further shows upon information and belief that

between the first Wednesday of May and the second Monday in Au-
gust, in the year 1885, the board of assessments and revision of taxes
in the city of Newark, acting under color of the said statutes of
the State of New Jersey, did value and assess for taxation
7 the shares of stock in the said bank owned by residents of
the said city of Newark against the individual shareholders
thereof, and the shares of stock of the said bank owned by residents
of States other than the State of New Jersey against the holders
thereof, which valuation and assessment were at the rate of $65 per
share. The schedule hereto annexed, and marked "A," sets forth in
detail the names of the said owners of the shares of stock of said
corporation, with the number of shares held by each and the total
valuation of the said shares.

5. And your orator further shows, upon information and belief, that the said board of assessment and revision of taxes in the city of Newark has levied a tax, for the purposes of said municipal corporation for the current year, including county and school taxes (*inter alia*), upon the said valuation and assessment of the shares of stock aforesaid in said bank at the rate of $1.90 for each $100 of the said valuation, and that it is the purpose and intention of the said A. Judson Clark, receiver of taxes as aforesaid, to collect by process of law from the said individual shareholders and from your orator a tax so levied upon said valuations and assessments of the said shares of stock, he, the said A. Judson Clark, receiver as aforesaid, having served upon the said shareholders and your orator a demand for the payment of the said tax.

6. Your orator further shows that section 5219 of the Revised Statutes of the United States provides in reference to national banks as follows:

"Nothing herein (the national bank act) shall prevent all the
shares in any association from being included in the valuation of
the personal property of the owner or holder of such shares in assess-
ing taxes imposed by authority of the State within which the asso-
ciation is located, but the Legislature of each State may determine
and direct the manner and place of taxing all the shares of
8 national banking associations located within the State, sub-
ject only to the two restrictions that the taxation shall not be
at a greater rate than is assessed upon other moneyed capital in the
hands of individual citizens of such State, and that the shares of
any national banking association, owned by non-residents of any
State, shall be taxed in the city or town where the bank is located,
and not elsewhere. Nothing herein shall be construed to exempt
the real property of associations from either State, county, or muni-
cipal taxes to the same extent according to its value as other real
property is taxed."

7. Your orator, claiming and averring that the said shares of the capital stock of the said bank are not legally liable to taxation for the purposes aforesaid; that the said statutes of New Jersey, in so far as they seek to authorize the assessment and taxation of the shares of national banks located within the State of New Jersey, are contrary to the provisions of the said section 5219 of the Revised

Statutes of the United States and of the Constitution of the United States, and are void, for the reason that the State of New Jersey has imposed no tax whatever upon "other moneyed capital in the hands of individual citizens of such State," within the meaning of said section 5219 and of the Constitution of the United States, but has, upon the contrary, expressly exempted it from taxation within said State, and that said valuations and assessments of the shares of stock in the said bank, and the said levy of taxes thereon, are also void, further shows, upon information and belief, as follows:

(*a.*) That by section 15 of an act, approved April 11, 1866, entitled "A further supplement to an act entitled 'An act concerning taxes,' approved April 14th, 1846," it is provided that the persons holding the capital stock of the corporations therein mentioned shall not be assessed upon the capital stock so held, the said corporations
9 being "all private corporations of this State, except banking
institutions, and except those which by virtue of any contract in their charters or other contracts with this State are expressly exempted from taxation, and except mutual life insurance companies specially taxed."

(*b.*) That during the said period between the first Wednesday of May and the second Monday in August, in the year 1885, the aggregate taxable value of the shares of stock in the hands of the individual citizens of said State of the said private corporations of this State (not including banking institutions, nor those corporations which, by virtue of any contract in their charters or other contracts with this State, are expressly exempt from taxation, and not including mutual life insurance companies specially taxed), which shares of stock were by the laws of New Jersey exempt from all taxation in the hands of the persons holding the same, amounted to a vast sum, to wit, to at least the sum of $301,485,000.

(*c.*) That by section 15 of the act of April 11th, 1866, aforesaid, it is provided that depositors in savings banks taxed by virtue of the said section should be exempt from taxation on their personal estate to the amount of their deposits.

(*d.*) That during the said period the aggregate taxable value of the deposits in the said savings banks made by the individual citizens of this State, which deposits were exempted from taxation in the hands of the depositors, amounted to the sum of $24,017,916.99.

(*e.*) That the several species of moneyed capital mentioned in paragraphs marked *a*, *b*, *c*, and *d* of this bill of complaint,
10 to the extent therein stated, have not, in fact, been valued and
assessed for taxation by the assessing officers in the various taxing districts throughout the State, but that the same have uniformly in the State, and by the deliberate and intentional act of said assessors, been omitted from the assessment duplicates of the said taxing districts, including the city of Newark, in which city over 20 per cent. of the whole of the said exempted and untaxed moneyed capital is held by residents thereof.

(*f.*) That it is and was during the said period the official duty of all assessors of property for taxation throughout the State and of the board of assessment and revision of taxes in the said city of New-

ark to estimate and assess annually, at its full and fair value, all
the real and personal property liable to taxation in their taxing
districts, and to set down the same in their assessment books or
duplicates, and to affix thereto their certificates, under oath, that
they have diligently inquired respecting the nature and value of
the real and personal estate liable to taxation in their said taxing
districts and have valued all the said property liable to taxation at
its full and fair value, having deducted from such value only such
balance of debts as is prescribed by law; that the said assessments,
certificates, and oaths were made by the respective officers for the
purpose of taxation for the year 1885 throughout the various taxing
districts of the said State, including the said city of Newark, and
that the aggregate amount of the taxable personal estate, including
all taxable moneyed capital, after deducting the amount of the debts
of the persons assessed therefor, was of the value of $120,134,162, of
which at least $12,253,350 was composed of the assessments of the
shares of national banks located in the said State, and that
11 the aggregate amount of the debts which had been deducted
in the assessments aforesaid from the valuation of the taxable
personal estate of such debtors did not exceed the sum of $4,797,655
in the said State; that the aggregate valuation of such taxable personal estate, including all moneyed capital, in the said city of Newark, for the said year, was $18,730,160, and that the valuation of shares of national banks in said city (which valuation was included in said sum) was $2,576,512, after deducting the amount of the debts claimed to be deducted by the holders of such personal estate, and the aggregate amount of the debts which had been deducted in the assessments aforesaid from the valuation of the taxable personal estate of such debtors did not exceed the sum of $1,419,888 in said city, and that during the period aforesaid the total par value of the shares of the capital stock of national banks located in the said State was $12,253,350.

(*g*.) That by reason of the enactment of the laws hereinbefore
referred to exempting from taxation the various forms of moneyed
capital in the hands of individual citizens of this State, which ex-
empted capital aggregates in value the sum of $325,502,946 at least,
as hereinbefore set forth, and of the fact that the laws taxing
moneyed capital in such hands imposed a tax upon no more than
$112,678,467 in value of moneyed capital, as stated above in para-
graph marked (*f*), the State of New Jersey has not, within the true
intent and meaning of the said section 5219 of the Revised Statutes
of the United States, imposed upon "other moneyed capital" in the
hands of the individual citizens of the said State a like tax with
that which the said State has sought to impose upon the shares of
stock of the national banks located within the limits of the
12 said State, and which the said defendants propose to collect
from your orator and from its shareholders.

8. And your orator further shows that by the statutes of New Jersey it is provided that it shall be the duty of the said banks to retain and pay the amount of the tax assessed to each of the nonresident shareholders thereof out of the dividends from time to time

declared, and that the said tax shall be a lien on each of the said stockholders' shares of stock, and that the same shall be liable to be levied on and sold by virtue of a tax warrant duly issued against the person taxed.

9. And your orator further shows that the said defendants will, if the said assessment of the shares of the said bank is not decreed to be illegal, and if they, the said defendants, are not restrained by the injunction of this honorable court, proceed to collect, and that they they have threatened to collect, the taxes so unlawfully assessed against the shareholders of your orator upon or in respect to their said shares, either by levying upon and selling their said shares or by seizing, in the hands of your orator, the dividends which have been or may be declared by your orator sufficient in amount to satisfy said taxes, and by requiring your orator to pay the taxes levied upon so many of said shares as are owned by persons not residents of the State of New Jersey, and that thereby irreparable injury would not only be done to each of said shareholders, but also to your orator, who would thereby be subjected to a great loss of standing and credit and other injuries, for the redress of which your orator is afforded no remedy by the strict rules of the common law, and the franchises with which your orator is invested by the act of Congress aforesaid would be greatly impaired in value, and if your orator should pay the said taxes so levied upon said illegal assessments out of the moneys of its stockholders in the hands of your orator, as aforesaid (stockholders owning a large number of
shares of stock of your orator having notified your orator
13 not to pay said tax levied upon their said shares), your orator
would be subject to a great multiplicity of suits brought by its separate shareholders for so doing, and, in any event, a great number of suits might be rendered necessary to adjust the rights of all the parties, and your orator would be subjected to great expense and irreparable injury thereby.

10. And your orator further shows that it has frequently and in a friendly manner applied to the said defendants and requested them to refrain from collecting the said taxes so unlawfully assessed, and from taking any proceedings against your orator, by legal process or otherwise, to enforce the collection thereof, and your orator well hoped that the said defendants would have complied with such reasonable requests, but that they absolutely refuse to comply therewith and threaten and intend to enforce the collection thereof, unless restrained by the order or process of this honorable court; all which actings and doings of the said defendants are contrary to equity and good conscience and tend to the manifest injury of your orator.

In consideration whereof, and forasmuch as your orator can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said defendants, The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver of taxes of said city, may full, true, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were now here repeated and they particularly interrogated in respect thereto, and that the said taxes so assessed and levied as aforesaid may be decreed to be illegal and void, and that the said defendants and their servants and agents may be enjoined and restrained from collecting or attempting, by process of law or otherwise, to enforce the collection thereof; and that your orator may have such further and other relief in the premises as may be agreeable to equity and good conscience—

14 May it please your honors to grant unto your orator, not only a writ of injunction issuing out of and under the seal of of this honorable court, to be directed to the said The Mayor and Common Council of the City of Newark and the said A. Judson Clark, receiver of taxes, enjoining and restraining them as hereinbefore prayed, but also a writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants, thereby commanding them, on a certain day and under a certain penalty therein to be expressed, to appear before your honor in this honorable court, then and there to answer the premises and to stand to, abide by, and perform such order or decree as to your honors shall seem meet and shall be agreeable to equity and good conscience,

And your orator will ever pray, etc.

JOHN W. TAYLOR,
Solicitor and of Counsel for Complainant.
CHARLES W. WELLS,
GEORGE W. JENKINS,
Of Counsel.

15 UNITED STATES OF AMERICA, } *ss:*
District of New Jersey, }

Charles G. Rockwood, of the city of Newark, in said district, being duly sworn, on his oath deposes and says that he is the cashier of the National Newark Banking Company, the complainant in the foregoing bill named; that he has read the said bill and knows the contents thereof; that the same is true of his own knowledge, except the matters therein stated on information and belief, as to which matters he believes the same to be true.

CHS. G. ROCKWOOD.

Sworn and subscribed this — day of October, A. D. 1885, before me—

HENRY B. TAYLOR,
Notary Public of N. J.

EXHIBIT "A."

		Shares.
Melissa Dodge Atterbury	New York city	10
Adm'r est. of Eliz'th Courter, dec'd	Balto., Md.	4
Rev. J. Abeel Baldwin	Brooklyn, N. Y.	21
Mrs. Mary Bradley	Washington, D. C.	50
Mrs. Mary W. Babcock	Stonington, Conn.	25
Rev. H. N. Brinsmade, dec'd	Gt. Barrington, Mass.	20
Richard L. Butler	New Albany, Ind.	26
George Baldwin	Tremont, Ill.	5
Mrs. Nancy S. T. Bradford	Tallahassee, Fla.	24
Mrs. Julia F. Burnham	Champaign, Ill.	8
Miss Anna M. Crane	Elmira, N. Y.	8
Rev. Robt. Crawford	Deerfield, Mass.	40
Lyman Dwight Chapin	Los Angeles, Cal.	48
Robt. P. Chandler	New York city	4
Mrs. Francis F. Chrystie	" "	36
Elizabeth Courter, dec'd	Balto., Md.	1
Olivia Daft, dec'd	New York city	87
16 Mary Pinneo Dennis	Beirut, Syria	18
Wm. E. Dodge, Jr., ex. W. B. Kinney, dec'd	New York city	25
Mrs. Susan C. Faitoute	Westport, Conn.	60
Wm. C. Gildersleeve, dec'd	Pittston, Pa.	36
Catharine H. Gosman	Woodside, L. I.	12
Mrs. Maria Louisa Jacobus	Brooklyn, N. Y.	18
Rev. Geo. W. Lybrand	Phila., Pa.	17
Charlotte T. Moeller	Binghampton, N. Y.	120
Mrs. Mary E. Morris	Saugatuck, Conn.	38
Augustus R. Ball, dec'd	Newark, N. J.	4
Eliza A. Baldwin	do	4
Rev. Geo. L. Prentiss	New York city	19
Mrs. Martha B. Pollock	Mankato, Minn.	11
Elias Riggs	Constantinople, Turkey	14
Ogden N. Rood	New York city	53
E. Ogden Roos	Troy, N. Y.	15
Mrs. Sarah A. Ross	N. Y. city	29
Jacob G. Sanders	Albany, N. Y.	28
Fredrika Stewart	Pittsfield, Mass.	3
Caroline Snowden	Kingston, Penn.	5
Mrs. Anna E. Tallman	N. Y. city	8
Mrs. Lucy H. Tichenor	San Francisco, Cal.	14
Glorianna C. Thompson	Lima, Ind.	6
Geo. Winthrop Thorne	N. Y. city	30
Isaac P. Trimble	do.	25
Mrs. Sarah L. Tuttle, dec'd	Cedarvale, Kan.	1
Trustee est. Helen M. Blake, dec'd	Providence, R. I.	215
Mrs. Henrietta Vance	Oberlin, O.	20
E. Van Arsdale, dec'd	N. Y. city	60
Mrs. Sarah Van Gieson, dec'd	Poughkeepsie, N. Y.	60

		Shares.
Mrs. Annie C. Vermilye	N. Y. city	25
Jacob D. Vermilye	do.	50
Thomas E. Vermilye, Jr.	do.	10
Sarah B. West	Lima, Ind.	23
Charles H. Woodruff	N. Y. city	13
Total held by non-residents of New Jersey		1,506
Timothy Andruss, dec'd	Newark, N. J.	22
17 Joseph Baldwin, dec'd	do.	23
John Barnet, dec'd	do.	2
Mrs. Eliza B. Bennett	do.	13
Jas. A. Banister	do.	29
Chas. Borcherling	do.	247
Mrs. Charlotte A. Burnet, dec'd	do.	13
Miss Helen E. Burnet	do.	8
Edw'd G. Burnet, dec'd	do.	12
Horace T. Brumley	do.	4
John H. H. Bruntnall	do.	57
Dr. James B. Burnet	do.	3
Mrs. Matilda C. Brewster	do.	10
Robt. B. Campfield, Jr.	do.	4
Ann Jane Charles	do.	2
Phillip W. Crater	do.	100
Miss Mary A. Camp	do.	23
Mary Eliz. Campfield	do.	33
Mrs. Emeline W. Clegg	do.	20
Mrs. Sarah E. Crane	do.	10
Mrs. Susan Crane	do.	10
Aaron Coe	do.	55
Abby Coe	do.	48
Joseph D. Coe, dec'd	do.	18
David J. Colton	do.	157
Stephen H. Condict	do.	80
Henry Congar	do.	70
Horace N. Congar	do.	20
Matilda M. Day	do.	10
Mary R. Denman	do.	52
Alfred L. Dennis	do.	80
Peter S. Duryee, dec'd	do.	16
Mrs. Susan R. Duryee	do.	5
Albert Edwards, dec'd	do.	4
Elizabeth Edwards, dec'd	do.	2
Martha F. Edwards	do.	1
Chas. H. Edwards	do.	1
Mrs. Emeline T. Eberhardt	do.	5
Ulrich Eberhardt	do.	10
Mrs. Elizabeth Evans	do.	14
Est. Chas. S. Macknet, dec'd	do.	40
Est. Aaron D. Bragaw, dec'd	do.	20

			Shares.
18	Edgar Farmer, dec'd	Newark, N. J.	20
	Fred'k T. Frelinghuysen	do.	30
	Firemen's Insurance Co.	do.	400
	Mrs. Hanna J. Grant	do.	2
	Chas. W. Graves	do.	2
	Mrs. Louisa C. Gifford	do.	3
	Francis Virginia Goble	do.	21
	Mrs. Phebe Ann Goble	do.	89
	Ezra Gould	do.	16
	Jared Haines	do.	14
	David A. Hayes, dec'd	do.	40
	Cornelia B. Halsey	do.	16
	Joseph A. Halsey	do.	50
	Joseph S. Halsey	do.	13
	Samuel Halsey, deceased	do.	100
	Edmund F. Heath	do.	100
	S. R. W. Heath	do.	20
	Sarah F. Hedges	do.	4
	Miss Mary B. Hathorn	do.	20
	Wm. W. Hullfish (in trust)	do.	1
	Miss Mary C. Jacobus	do.	51
	Catharine Johnson	do.	30
	Florence M. Johnson	do.	14
	Helen A. Johnson, deceased	do.	23
	Phebe B. Johnson	do.	3
	John P. Jube	do.	39
	Sarah L. Johnson	do.	18
	Adolph Koegler	do.	103
	Emily G. King	do.	7
	Mrs. Mary E. Kilburn	do.	105
	Chas. F. Kilburn	do.	5
	Wm. H. Lee	do.	3
	Mary A. Lindsley	do.	3
	Theodore F. Martin	do.	26
	Theodore Mackner	do.	60
	Obadiah C. Meeker	do.	10
	Benj. C. Miller	do.	12
	Oscar B. Mockridge	do.	24
	J. N. Morehouse	do.	26
	Miss Catharine L. Morris	do.	32
	Carrie E. Morehouse	do.	2
19	Mary Emily Morehouse	do.	18
	Albert Munn, deceased	do.	10
	Elizabeth C. McBride	do.	6
	Newark Mut. Fire Assurance Co.	do.	154
	Newark Fire Dep't	do.	2
	Newark Savings Inst. Trustees	do.	17
	Walter S. Nichols	do.	44
	Eveline Nichols	do.	4
	Caroline Nichols	do.	6

		Shares.
Henry Nichols	Newark, N. J.	20
Joseph O. Nichols	do.	18
Chas. Nichols	do.	13
Mrs. Mary F. Oehme	do.	66
Archibald Parkhurst	do.	2
Henry N. Parkhurst	do.	75
Sarah Eveline Parkhurst	do.	12
Mary N. Parkhurst	do.	4
Thos. B. Peddie	do.	60
Jabez P. Pennington	do.	80
Henrietta R. Pennington	do.	11
Harriet Pierson	do.	21
Harriet C. Pierson	do.	8
Matilda R. Pierson	do.	8
Susie A. Pierson	do.	2
Jas. B. Pinneo	do.	130
Protestant Foster Home Society	do.	38
Edward E. Rankin	do.	20
William Rankin	do.	7
David W. Richards	do.	100
Wm. A. Righter	do.	66
Wm. A. Ripley	do.	8
Chas. G. Rockwood	do.	20
P. Sanford Ross	do.	20
Rector, wardens, etc., Trinity church	do.	34
Jas. R. Sayre, Jr.	do.	20
Jonathan F. Stearns, rev'd	do.	20
Wm. H. Steele, rev'd	do.	140
Miss Frances L. Smith	do.	28
Mrs. Margaret V. N. Smith	do.	40
Richard Smith	do.	121
Julia St. Clair Smith and Anna C. Smith	do.	2
20 Mrs. Joanna Shugard	do.	66
Obadiah Thayer, dec'd	do.	100
Gertrude H. Thomas	do.	8
Abby L. Tucker	do.	2
Henry W. Tunis	do.	4
Geo. F. Tuttle	do.	4
Joseph N. Tuttle	do.	50
Samuel Tuttle, dec'd	do.	19
Trustee 1st Presbyterian church	do.	20
Trustee est. David Doremus	do.	90
Trustee children of Fred'k Bigelow, deceased	do.	16
Eugene Vanderpool	do.	110
Beach Vanderpool	do.	200
Mrs. Elizabeth C. Van Nest	do.	25
Elizabeth V. Ward	do.	5
George Ward	do.	1
George S. Ward	do.	2
John F. Ward	do.	4

		Shares.
Marcus L. Ward, dec'd	Newark, N. J.	223
Marcus L. Ward, trustee	do.	50
Marcus L. Ward, Jr.	do.	59
Joseph M. Ward	do.	20
William L. Westfall	do.	10
Mrs. Jane E. Williams	do.	7
Sarah Williams	do.	31
Aaron P. Whitehead	do.	3
Edward H. Wright	do.	174
John C. Woodruff	do.	10
Caroline E. Ward	do.	2
Julia M. Zabriskie, dec'd	do.	27
Total held in Newark		5,716

21 *On Bill. Answer. Filed Dec.* 19, 1885.

Circuit Court of the United States for the District of New Jersey.

Between—

THE NATIONAL NEWARK BANKING COMPANY, Complainant,
and
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. JUDSON CLARK, Receiver of Taxes; Defendants.

The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver of taxes of said city, the defendants in the above-stated suit, for answer to the bill of complaint therein filed against them, answer and say—

First. That they admit the statements made in paragraphs one and two of said bill to be true.

Second. That they admit the statements made in paragraph three of said bill to be true, except that they deny the truth of that part of the averment therein made that by the laws of this State the shares of non-resident stockholders of national banks are, or are required to be, assessed to the said banking associations as an assessment against such associations; and they aver and show that by the laws of this State the tax upon the shares of non-resident stockholders, while made in form against such associations, is in fact made upon the shares of such non-resident stockholders in
22 the township, ward, or taxing district where the bank is located; that the property of the said bank can in no case be sold to satisfy the assessment when made, but that the shares of non-residents so taxed or assessed, or the dividends from time to time declared thereon, can alone be reached to satisfy and pay the assessment so made, as will more fully appear by an examination of the statutes of this State relating thereto.

Third. They admit the statements and averments made in paragraphs four and five of said bill to be true, except that this defendant, A. Judson Clark, as receiver, has demanded payment of the taxes so levied upon the said shares from the shareholders, and these defendants say that the only demand made (if it be so termed) by the said A. Judson Clark was his official notice given to the owners and holders of the said shares so assessed of the assessments so made against them as required by the laws of this State, in order that payment thereof might be made when due, and they might save the deductions made according to law by earlier payment if they desired so to do.

Fourth. These defendants admit that the quotation made in the sixth paragraph of said bill from the 5219th section of the Revised Statutes relating to the taxation of the shares of national banks is correct as given therein.

Fifth. That for answer to the allegation and averment made in paragraph seven of said bill, and the specifications thereto appended, marked *a*, *b*, *c*, *d*, *e*, *f*, and *g*, these defendants say that it is not true as therein alleged that the State of New Jersey has imposed no tax whatever upon other moneyed capital in the hands of individual citizens of such State within the meaning of section 5219 of the Revised Statutes and of the Constitution of the United States, or that the said State has expressly exempted such capital from taxation, and they deny that the valuations and assessments made upon the shares of stock in the said bank and the levy of taxes thereon
23 are void for the reason therein given, or for any other reason,
and, on the contrary thereof, aver and insist that the levy and assessment so made as aforesaid are legal and binding, and should be upheld and sustained.

And these defendants, further answering the allegations, averments, and statements made in the said specifications or subdivisions, say that it is true that the stock of private corporations, in this State is not by the laws thereof in all cases assessed for taxes against the holder; and it is also true that the money deposited in the savings banks of this State is not under its laws assessed for taxes against the depositor or depositors of the money so deposited; but that if the statement is made directly or inferentially therein that such stocks and deposits are by the laws of said State exempted, or that they are not taxed the same and at a rate equal to that imposed upon other moneyed capital in said State, that such statement is untrue.

And these defendants, further answering, show that by the constitution of this State, as amended in 1875, it was, among other things, declared as a part of the fundamental law that "property shall be assessed for taxes under general laws by uniform rules and at its value;" and that the laws of the State in force when this tax was levied in relation to the taxation of the shares of banks and all other property are in conformity with this constitutional requirement.

That while it is true that the State did, in order to encourage and stimulate industries, exempt some property from taxation, and did likewise exempt the property of certain religious and charitable associations and corporations from motives of public policy, it is also true that these exemptions were made mainly and almost entirely before the act of the national Legislature authorizing the taxation of

the shares of the national banks was passed, and that the property thus exempted from taxation and much of which the State has bound itself not to tax, while it aggregates a considerable sum, is not, when compared with the whole amount of property which
24 remains liable to taxation, a material part of the taxable property of the State.

They further show that the laws of this State are designed to secure the equal taxation of all property which the State has the power to tax; that under their provisions all the property in the State which it has the power to tax, except that exempted as hereinbefore stated (which is comparatively of small amount), is annually once taxed, and that double taxation is sought to be, and to a very great extent is, avoided.

And these defendants, further answering, show that the statements made in the specifications under paragraph seven of said bill of the amount of personal and real property rated for taxation in this State for the year 1885, and set down for taxation in the different taxing districts by the officers appointed for this purpose, are not correctly given; that it is impossible to tell what the amount of the ratables for the year 1885 will be, because the same have not as yet been officially ascertained, and in some instances have not been completed or determined, but that for the year 1884, as appears by the official returns made and filed in the office of the State comptroller, the aggregate value of personal property so rated and taxed, was the sum of $123,511,929.34, and of the real estate was the sum of $478,091,788, making a total of real and personal of $604,603,717.34, from which was deducted under the law for personal indebtedness the sum of $46,775,603, leaving a total sum upon which taxes were levied in that year of $554,828,114.34.

And these defendants, further answering, say that the statement therein made as to the value of property, personal and real, rated for taxation in the city of Newark for the year 1885 is not correct; that no correct ascertainment of the amount thereof can be obtained until after the first day of January next, for the reason that the revision and correction of the list of such property and the valuation thereof is now going on and will not close until that date; that for the year 1884, as shown in the official reports thereof made
25 as aforesaid, the value of the personal property assessed in said city was the sum of $18,524,775, and of real estate $72,456,775, making a total of $90,981,550, from which there was deducted for personal indebtedness the sum of $1,505,170, leaving the amount of $89,476,380 upon which taxes were imposed and assessed; that they are unable to state accurately what the total value of the taxable property of said city will be as finally determined for the present year, but that to the best of their knowledge and belief it will exceed $91,500,000—that is, that the increase from 1884 to the present year will be over $2,000,000.

And these defendants, further answering, say that they cannot say whether the amount as stated in said specifications of the aggregate capital stock of the national banks located in this State is correct or not, and they leave the complainant to make such proof with rela-

tion thereto as it may be advised may be necessary, and they admit that the valuation as stated of national bank shares rated for taxation in said city for the present year is, as stated therein, $2,576,512, and that this valuation is the sum upon which taxes have been or will be imposed in said city, but they show that this sum is the aggregate of the value of all the shares of the national banks located in said city and taxable therein at the rate of valuation fixed by the board of assessment and revision of taxes of said city, and they show that all those persons who reside in this State, outside of the city of Newark, and who hold shares of the stock of the banks located therein, are assessed, if at all, in the townships in which they severally reside, and they show that a large proportion of the owners and holders of such stock reside in parts of the said State outside of the said city, as will appear by the report of the said banks made to the said board of assessment and revision of taxes for the current year, and that they did so reside at the time the said levy and assessment *was* made; and they further show that out of the sum assessed against each owner or holder of said stock residing in said city the said owner or holder had, by the laws of said State, a right to deduct debts which they then owed to creditors residing
26 in this State, and that large sums, the aggregate of which these defendants are now unable to give, were so deducted, and that the aggregate of the sum actually assessed against the owners of such stock in the said city did not, as the defendants believe and aver, exceed, after deductions made for such indebtedness, the sum of two millions of dollars.

And these defendants, further answering, say that they deny that the shares of stock held by individual citizens of this State between the first Monday in May, 1885, and the second Monday in August, 1885, of private corporations of this State (not including the shares or stock of banking institutions, or of those corporations which, by contract with the State, were expressly exempted from taxation, and mutual life insurance companies specially taxed), were of the aggregate taxable value of $301,185,000, as stated in specification marked "*b*," under paragraph seven of said bill, and they deny that such shares are, by the laws of this State, exempt from taxation; and these defendants further say that they have no means of ascertaining and do not know what amount of money was during said period on deposit in the various savings banks and savings institutions of this State, or what was the taxable value of such deposits at that time; and they deny that the moneys on deposit were, at that time, or at any time, by the laws of this State exempt from taxation, and they aver and show that a certain proportion of all such shares or stock were, under the said laws, taxable to and were, in fact, assessed against the owners and holders of such stock at its taxable value; that a certain other proportion of such shares or stock were at the same time, under said laws, taxable to and were, in fact, assessed against the several corporations by which the said shares of stock were owned at its taxable value, and that in all cases in which such shares of stock were not assessed either directly against the holders or to the corporations as aforesaid, that the property of the cor-

poration by which such stock or shares were issued, and
27 which it, in fact, represented, was by the said laws taxable to
the said corporation or corporations, and was, in fact, levied on and assessed against them, and that the money so as aforesaid on deposit in the said savings banks was, under said laws, taxable to and was, in fact, levied on and assessed for taxes at its taxable value against the said banks, and that the taxes imposed upon the said shares of stock or personal property was, at the same rate as that imposed upon shares of stock of national banks, liable to taxation in the several taxing districts of said State, and not greater.

And these defendants, further answering, say that while, under the act of Congress aforesaid, this State might impose a tax upon the real estate of national banks, such tax is not imposed, and no levy or assessment is or has been made thereon, and that this complainant owns real estate of great value, situate in the said city, which would otherwise be subject to taxation, upon which no tax is imposed, levied, or assessed; that inasmuch as the shares held by the stockholders, so assessed, represent the entire property of the said banks, *that* all other taxable property of the said banks has been and is exempted from taxation.

And these defendants, further answering, show that by the laws of this State, in addition to the tax imposed upon the capital of private corporations located in and doing business in this State, and upon the property of such corporations as hereinbefore set forth, a further and additional tax has been and is imposed, levied, and assessed, in the nature of a franchise tax for State purposes, which in the aggregate amounts to a large sum, and, as defendants aver, is not less than $1,561,425.77, as shown by the report of the State board of assessors on file in the office of the comptroller of this State, of which sum $1,366,152.26 is levied and assessed upon railroad and canal companies and $195,273.51 upon all other corporations classed as miscellaneous corporations; that this tax is imposed upon the
stock, property, and franchises of the said corporations, in
28 addition to the tax levied and assessed by the local boards of
assessment in the several taxing districts, and that no imposition or burden of this kind is imposed or attempted to be imposed upon the stock or property of national banks located or doing business in this State.

And these defendants, further answering, say that they deny that the laws of this State authorize the imposition of a greater rate of taxation upon the shares of national banks located in this State than is imposed upon other moneyed capital in the hands of individual citizens of this State, or that taxes are or have been imposed, levied, or assessed upon such shares at a greater rate than is and has been imposed, levied, and assessed upon other moneyed capital in the hands of individual citizens of this State, and they aver and show that the tax so imposed upon the shares of complainant's stock by the said taxing officers was and is at the same rate, and no greater, than the tax imposed, levied, and assessed in the said city upon other moneyed capital in the hands of individual citizens liable to taxation therein and was and is equitable and just, and was authorized by the laws of said State and of the United States.

And these defendants, further answering, say that they are advised by their counsel, and believe, and therefore charge that the questions raised by the bill filed herein have never before been presented either to a court of law or a court of equity, and that there has been no adjudication thereon; that the legality and binding force of the laws of this State with reference to the taxation of the shares of national banks located therein under which the assessments complained of in the said bill were made and of the taxes imposed under said laws upon such shares has never been judicially declared or seriously questioned by any court competent to pass upon their validity. They further show that from time to time and for many years past taxes have been imposed under the said laws upon the said shares in this State in the same manner and to the same extent as they were imposed during the present year for which complaint
29 is now made; that such taxes so imposed have uniformly been paid without question; and they further show that the city of Newark, for the support of its local government, is authorized by law to anticipate the collection of taxes to meet the expenses for the current year by temporary loans, and that loans based upon the taxes so levied have, in point of fact, been made by it, and the moneys derived therefrom have been already expended for the benefit and support of the government of the said city; they further show that no irreparable injury can come to the said complainant, or to the shareholders so assessed as aforesaid, by reason of the said assessments in case of the collection thereof, for the reason that if it shall be held that the assessments made upon the said shares was illegal the said city will be required to repay the moneys so collected and received, and is at all times amply responsible therefor; they therefore submit that this court should not interpose by way of injunction to prevent the collection of the said assessments until after a full examination and hearing, and until this suit shall have been finally determined on its merits.

And these defendants deny that any other matter or thing alleged in said bill, and not herein well and sufficiently answered, traversed or denied, is true; and they ask that they may be hence dismissed with their reasonable costs and charges in this behalf sustained; and they will ever pray.

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,
JOSEPH E. HAYNES, *Mayor.* [L. S.]

30 NEW JERSEY }
Essex County } *ss:*

The answer of the defendants, The Mayor and Common Council of the City of Newark, was taken this — day of December, 1885, before me, under the common seal of the said corporation, as by their said seal thereto affixed appears.

[SEAL.] JAMES E. HOWELL,
Notary Public of New Jersey.

31 NEW JERSEY,
Essex County, } *ss:*

Joseph E. Haynes, being duly sworn, on his oath says that he is the mayor of the city of Newark; that he has read the foregoing answer, and that the matters and things therein set out, so far as they relate to the city of Newark, are true to the best of his knowledge and belief, and so far as they relate to the acts of others he believes them to be true.

JOSEPH E. HAYNES, *Mayor.*

Subscribed and sworn to before me this 16 day of December, 1885.

J. E. HOWELL, [L. S.]
Notary Public of N. J.

32 NEW JERSEY,
Essex County. } *ss:*

A. Judson Clark, one of the above-named defendants, being duly sworn, on his oath says that the matters and things set out in the foregoing answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to be true.

A. J. CLARK.

Subscribed and sworn to before me this 17th day of December, 1885.

J. E. HOWELL. [L. S.]
Notary Public, N. J.

33 *On Bill, &c. Replication.*

Circuit Court of the United States for the District of New Jersey.

Between—

THE NATIONAL NEWARK BANKING COMPANY, Compl't,

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, & *al.*, Def'ts.

The replication of The National Newark Banking Company, complainant, to the answer of The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver, defendants.

This replant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies to the said answer, for replication thereunto, says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

JOHN W. TAYLOR,
Solicitor for and of Counsel with Complainant.

Endorsed: Circuit court of the United States for the district of New Jersey. Between The National Newark Banking Company, compl't, and The Mayor and Common Council of the City of Newark, & *al.*, def'ts. On bill, &c. Replication. John W. Taylor, sol'r. Filed Jan. 7, 1886. S. D. Oliphant, clerk.

34 In the United States Circuit Court for the District of New Jersey. In equity.

THE NATIONAL NEWARK BANKING COMPANY

vs.

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK and A. Judson Clark, Receiver of Taxes.

By the court:

BUTLER, *J.*:

The questions raised by this bill were embraced in and covered by the case of The Mercantile National Bank *vs.* The Mayor, Common Council and Tax Receiver, which arose in the Southern District of New York, and was decided by Circuit Judge Wallace, as appears by the record, as well as by the admissions of the plaintiff's counsel.

While the decision in that case is not binding upon us, a proper regard for uniformity of decision and certainty in the law requires that we should follow it. We therefore adopt the views of Judge Wallace, and will accordingly enter a decree for the respondent.

WM. BUTLER, *Judge.*

(Endorsed:) United States circuit court, district of New Jersey. The National Newark Banking Company *vs.* The Mayor and Common Council of the City of Newark *et als.* Opinion. Filed Nov. 23, 1886. S. D. Oliphant, clerk.

35 United States Circuit Court, District of New Jersey. September Term, 1886.

THE NATIONAL NEWARK BANKING COMPANY, Compl'ts,

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK *et al.*, Def'ts.

This cause coming on to be heard before the circuit court, at the September term, eighteen hundred and eighty-six, upon bill, answer, replication, and proofs, and before his honor William Butler, the judge assigned to hold the said circuit court, pursuant to the statutes in such case made and provided, and Charles W. Wells and John W. Taylor appearing for the complainant, and Joseph Coult and John R. Emery for the defendants, and good reason appearing therefor—

It is hereupon, on this 23d day of November, eighteen hundred and eighty-six, in the term aforesaid, ordered, adjudged, and decreed that the bill be dismissed with costs, and that the injunction heretofore granted be dissolved.

WM. BUTLER, *Judge.*

(Endorsed:) United States circuit court, district of New Jersey. The National Newark Banking Company *vs.* The Mayor and Common Council of the City of Newark *et al.* Final decree. Filed Nov. 23, 1886. S. D. Oliphant, clerk.

Circuit Court of the United States.

FOR THE DISTRICT OF NEW JERSEY.

THE NATIONAL BANKING COMPANY,
Complainant,
vs.
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK AND A. JUDSON CLARK, Receiver of Taxes,
Defendants.

In Equity.

Bill for Injunction.

Testimony taken in the above stated cause before the subscriber, a Notary Public, at the office of JOHN W. TAYLOR, Esq., Newark, N. J., on the 21st day of September, 1886.

The testimony in this case is to be applicable to the six other cases which are to be argued together, as follows:

THE NEWARK CITY NATIONAL BANK,
vs.
SAME DEFENDANTS.

NORTH WARD NATIONAL BANK,
vs.
SAME DEFENDANTS.

THE GERMAN NATIONAL BANK,
vs.
SAME DEFENDANTS.

THE SECOND NATIONAL BANK,
vs.
SAME DEFENDANTS.

THE ESSEX COUNTY NATIONAL BANK,
vs.
SAME DEFENDANTS.

THE NATIONAL STATE BANK,
vs.
SAME DEFENDANTS.

Appearances: **John W. Taylor**, **Charles W. Wells**, of New York, and **George W. Jenkins**, counsel for complainants.

Joseph Coult and **John R. Emery**, counsel for defendants.

For the information of counsel for defendants and the Court, counsel for complainants state that they will rely upon the following statutory provisions of the State of New Jersey:

In relation to the exemption of moneyed capital of the State, they will rely upon the act of the legislature of New Jersey, of April 11, 1866; especially the 15th and 16th sections of that act, which is found in the Session Laws for the year 1866, and constitutes chapter 487, on page 1078; which act is found also in the New Jersey Revision of 1877, pages 1156 to 1160, and in pl. 60 to 90, inclusive; also, the act of the legislature of New Jersey, approved April 1, 1869, found in the Session Laws of 1869, on page 1149, and forming chapter 462 of those laws; which act will also be found in the New Jersey Revision of 1877, on page 1261, constituting pl. 90.

Also the act of the legislature of New Jersey, of April 10th, 1884, found in the Session Laws of 1884, on page 142, and forming chapter 101 of these laws. Special reference will be made to Section 1 of that act.

Reference will also be made generally to the N. J. Revision of 1877, entitled "Taxes," page 1139, especially to pl. 11 and 86.

Reference will be made also to the following statutory provisions:

To the N. J. Revision of 1877, page 1218, sec. 35; same vol., page 1066, sec. 42; same vol., page 514, pl 46 to 51, inclusive; same vol., page 64, sec. 35; Session Laws of 1884, chap. 101, page 142, especially to sec. 21; also to the same Session Laws, 1884, chap. 159, page 232; especially to sections 2, 3, 4 and 5.

Counsel for complainant offers in evidence portions of the following documents printed and published by authority of the legislature of New Jersey, as follows:

So much of the State Report of the State Board of Assessors for 1884 (together with the title page of said report, showing publication by authority), as is contained on pages 75 to 92 inclusive, showing the capital stock of corporations of the State of New Jersey which pay taxes on their capital stock at the rate of one-tenth of one per cent. to the State, and showing also the aggregate capital stock of those corporations to be $119,305,339.86; which portion of said document is hereto annexed. *(Marked Exhibit 1 for complainant.)*

(Counsel for defendants state that they desire to object to the admission of the exhibit, but, by consent, the specification of the objection is reserved till all the exhibits are offered.)

Counsel for complainant also offers pages 450 to 453 inclusive, of the same book, showing the paid-in capital stock of the railroad and canal companies of the State of New Jersey for 1884, and that the aggregate amount of said capital stock was $119,794,468; and showing also the amount of the bonded debt of said companies for that year. *(Marked Exhibit 2 for complainant.)*

Also page 290 of the Report of the Secretary of State, as the Commissioner of Insurance, for the year ending December 31, 1884, relating to insurance companies other than life, and showing (among other things) the location, date of organization, amount of capital stock, gross assets, gross liabilities and net surplus over all liabilities, including the capital stock; together with the title page of said document. *(Marked Exhibit 3 for complainant.)*

Also page 127 of the Report of the Secretary of State, as Commissioner of Insurance, for the year ending December 31, 1884, part 2, showing (among other things) the amount of capital stock, assets, and liabilities of stock life insurance companies of the State of New Jersey, on the 31st day of December, 1884; together with the title page of said document. *(Marked Exhibit 4 for complainant.)*

Also pages 59 and 60 (with title page) of the document entitled "Annual Statements of the Banks and Savings Institutions of the State of New Jersey for the year 1885," which page shows (among other things) the amount of deposits, assets, and liabilities of the savings banks of the State of New Jersey in 1885. (*Marked Exhibit 5 for complainant.*)

Also page 113 of the Annual Report of the Comptroller of the Treasury of the State of New Jersey, for the year ending October 31, 1885, containing the abstracts of the amount of ratables and financial statements from the counties and townships, together with the title page of said report. (*Marked Exhibit 6 for complainant.*)

Also the Report of the Comptroller of the Currency of the United States, made to the first session of the 49th Congress on December 1, 1885, which shows on page 209 that the capital stock of the 70 banks in the State of New Jersey, on May 6th, 1885, was $12,103,350, and on page 166, that the capital stock of 10 State banks in the State of New Jersey, on November 30th, 1882, was $1,219,175. The said report does not show the capital stock at a later date. (*Marked Exhibit 7 for complainant.*)

As to the exhibits now produced and offered by the complainant and marked respectively Exhibits 1 to 6, counsel for defendants object to so much of the statement of counsel in offering them in evidence as describes the contents of the documents otherwise than as appears from the documents themselves, and objecting specially to the admission of each of said Exhibits 1 to 6; they state their objections:

First—Each of these papers upon the face of it appears to be only a portion of a paper or document and is on that account inadmissible as incomplete.

Second—Because the papers do not appear to be published by authority or to be evidence of the facts therein appearing to be stated.

Third—Because the facts purporting to be stated upon the papers are, as against these defendants, evidence by hearsay, and unauthorized for the purpose of this suit.

Fourth—Because each and every of the papers is incompetent and the evidence irrelevant and immaterial.

And as the 7th, we object to the relevancy of the portions of the evidence referred to in Exhibit 7.

It is admitted that the paper now offered and *Marked Exhibit 8 for complainant*, contains a statement of facts which were substantially correct at the time of the filing of the bill. The amounts were changed somewhat by subsequent alterations and additions made by the taxing officers, and the alterations did not materially change the result. This paper shows the valuation of the real estate of Newark, assessed for taxes for the year 1885; the amount of personal property and the indebtedness of individuals deducted therefrom. It also shows the assessed value of the shares in National bank stocks included in the total assessment of personal property and the amount of personal indebtedness specially deducted therefrom.

Mr. Taylor, of counsel for complainant, was called out before the foregoing objections were entered, and, on returning, he finds the objections entered immediately after the statements of the evidence in these documents, and he desires to state now, what he would have stated before the entry of the objections.

The statement that counsel for complainant desires to make is, that he will, at the hearing of the causes, read the title pages and any portion of the contents of those documents which go to show that they emanate from public authority and which may be explanatory of the particular terms of evidence thus offered.

George W. Jenkins, sworn for complainants :

Direct examination, by complainant's counsel :

Q Have you been a member of the legislature of New Jersey ?

A I have.

Q What years ?

A 1883, 1884, and 1885.

Q Have you, for a series of years, been an officer of one of the branches of the legislature ?

A I was an officer of the Senate from **1871 to 1874,** inclusive—four years.

Q Have you seen the documents which have been referred to in the evidence, and portions of which have been offered in evidence and marked Exhibits 1, 2, 3, 4, 5, and 6 ?

A I have.

Q Do you know whether those documents were printed and distributed by State authority ?

A I know they were.

Objected to as not the proper way to prove publication.

Q I see that each of these documents marked Exhibits 1, 2, 3, 4, 5, and 6, purports to be printed by John L. Murphy, State printer ; do you know whether he was the State printer, and authorized, as such, to print on behalf of the State these several documents ?

Objected to.

A I know that he was for that year.

Q Well, to print these documents ?

A Yes, sir ; to print those documents that year.

Q Do you know whether the documents are genuine ?

A I believe them to be ; no doubt of it.

Q Did you procure them ?

A I did.

Q From what source ?

A From the State Comptroller ; these particular copies, you mean ?

Q Yes.

A From the State Comptroller, or from other State officers at Trenton; I think from the State Comptroller.

Q That report of the Commissioner of Insurance?

A I think the State Comptroller sent them all to me; they are kept in the vaults in the basement of the State House, and I think he sent them all.

Q You know that similar documents with similar imprints and the same contents were distributed?

A Were distributed to the members and by them to their constituents; I received them myself.

Cross examination, by defendants' counsel (Emery):

Q Did you get these from the State Comptroller's office personally; did you go there and get them?

A No; I wrote to the State Comptroller, Major Anderson, and asked him to send me these books; I had written for a number of copies and he always sends them to me.

Q You wrote a letter to Major Anderson, and after that letter you got these books?

A Yes, sir; express prepaid by the State.

Counsel for complainant also desires to refer to an act of the legislature of New Jersey, entitled "An act relative to publishing and printing," approved March 2, 1877, and found on page 1127 of the N. J. Revision, before referred to.

Also, to an act of the legislature of the same State, entitled "An act relative to publishing and printing," approved March 23, 1883, found on page 210 of the Session Laws of 1883, and designated chap. 183 of those laws.

GEORGE W. JENKINS.

Sworn and examined before me,
this 24th day of Sept., 1886.

A. B. C. SALMON, *Notary Public.*

Peter T. Wood, sworn for complainant.

Direct examination by complainant's counsel (Jenkins):

Q Where do you live?

A New Providence, Union County, N. J.

Q And what has been your business for the last few years?

A I have had charge of the department of Manufactures for the State Bureau of Statistics.

Q What have been your particular duties in connection with that office?

A Taking the statistics from the firms and companies throughout the State in differents lines of trade; such as last year we took the iron interest, iron mines, machine shops, steel works.

Q Different industries in different years?

A This year we are taking the breweries and silk mills, and probably will follow it up with segar manufactures.

Q Did you, at my request, visit the county clerk's offices in a number of counties in this State?

A I did, in ten of them, I think.

Q Name those counties.

A Mercer, Monmouth, Middlesex, Hudson, Essex, Burlington, Warren, Union, Passaic and Camden.

Q And what did you do in them?

A I went to the clerk's office, taking the record of corporations, and took the names of companies, the amount of capital stock authorized, and the amount paid up, under the various general laws of this State.

Q You got that information from what books?

A From the books of incorporations in the clerk's offices—the records.

Q Did you make out lists of those corporations?

A I did.

Q What did you do with those?

A I delivered them to you.

Q Did you figure up the total amount of capital stock in those corporations in those ten counties?

A The authorized capital?

Q Yes, embraced in those lists.

A I did.

Q What did you find the total amount of capital stock to be?

> (Defendants' counsel objects to the testimony sought to be obtained from this witness, on the ground that the same is incompetent, and irrelevant; and hearsay.)

A $1,358,143,926.

Q And did you afterwards take the list of corporations in Camden county, and endeavor to strike out from that list those that were known to be dead, or as never having commenced business, or not now in operation?

A I did, yes, sir.

Q What effort did you make in that direction?

A I took the list to Mr. Martindale, the cashier of the Camden County Bank, and he went over the list.

> (Defendants' counsel objects to the entire line of this testimony as incompetent, irrelevant, and hearsay testimony, so far as has been disclosed on the part of this witness in this case.)

Witness: I took the list there to Martindale, the cashier of that bank, and he went over the list, and gave me the names from that list of those he knew were still in existence, and where he knew they were out of existence he told me; those that he knew nothing about, we passed; those were checked in blue pencil on the list either with a cross or with a check.

Q How many different men did you go to?

A Then I went to a stock broker in Philadelphia, Mr. Seals, and he went over the list with me, and checked additional names. There were a number of names there that he found; he thought that they had some little property. And then I went to the Secretary of the Petroleum Stock Exchange, and he went over the list, and also gave me some corrections. That was all; those three; they, each one of them, went over the list; there was another gentlemen there, I don't know who he was; he was called in by the secretary.

Q And what did you find the total amount of the corporations formed under the general laws, in the county of Camden, was?

A $425,024,900.

Cross-examination, by defendants' counsel (Coult):

Q Where do you live?

A New Providence, Union County, N. J.

Q What was your former occupation?

A I was civil engineer for five years, was then connected with the Tribune, for a year and a half, as reporter on the city staff; from there I was apppointed special agent at the census office; at the same time, I was connected with the State Bureau of Statistics, with which I have been connected for eight years.

Q Now, I understand you to say that you went to the several county clerks' offices of these several counties, you have named, and made a list from some record in the office?

A Books of corporations.

Q Of the number of corporations that have been organized in those counties under the general law?

A Yes, sir.

Q And of the amount of the capital stock?

A Authorized?

Q Of the authorized capital stock of those several corporations, as appeared from the record?

A Yes, sir.

Q You had no personal knowledge of the existence of these corporations themselves?

A No, sir; none, except as I got from the records.

Q You had so little acquaintance in Camden county, that you went when you tried to find out what corporations were in existence there, and inquired of different individuals you thought might know something about it?

A I took the list—

Q And went and inquired of different individuals?

A Yes, sir.

Q Whether he knew any of those were still in existence, or had gone out of business?

A Yes, sir.

Q And what knowledge you got on that subject you derived from information by inquiry as you have stated?

A Yes, sir.

P. T. WOOD.

Sworn and subscribed before me,
this 24th day of September, 1886.

A. B. C. SALMON, *Notary Public.*

George W. Jenkins, recalled:

Direct examination, by complainant's counsel, (Wells):

Q You are one of the counsel in this case?

A I am.

Q Please look at that paper and tell me from what it was made up?—(paper shown witness.)

A This paper was made up from the list of corporations that existed on the list spoken of by Mr. Wood, and the list made by me from an examination of the pamphlet laws of the State, using Hood's Index, down to its date of publication, I think, 1871, and afterwards using the indices of the pamphlet laws from 1871 to 1885; all this large list of corporations made up of Wood's list and of the corporations created by special acts, found in the pamphlet laws, was used by me in making the list I now hold in my hand; I endeavored to find out, in all practical ways, the number of corporations on my large list that had never begun business, or had closed up their business, or were not now in existence; I consulted persons well acquainted with affairs, in their various counties, the books of the commercial agencies, Bradstreet's, and Dun & Co.'s, officers of banks, and in every way I could think of, tried to eliminate from the list all the dead and inactive corporations; the balance is contained on this list which I now produce.

Q State the persons upon whom you called in the county of Essex, for example, for such information; do not state, however, what they informed you?

> Counsel for defendants objects to the testimony offered by this witness, and to marking the paper produced by him as an exhibit in this cause, on the ground that the testimony which he has given or proposes to give, is incompetent, irrelevant, and hearsay testimony.

A I took the list of Essex corporations to Theodore Macknet, president of the Mutual Benefit Life Insurance Company; to Senator Frederick S. Fish, counsellor-at-law; John A. Miller, Jr., and Francis E. Marsh, Mr. Holbrook, (who has published the city directory for many years;) George Thomas, dealer in chemicals in Market street, (who was in the City Tax office many years, as I was informed;) and with John W. Taylor, counsellor-at-law, who has resided here for many years; and with these gentlemen, went over this list carefully.

Q State whether, or not, this list was made under your direction, from the other lists?

A This list was made under my direction, but not wholly by myself.

Q Then, as I understand you, this list is the residuum of the list made up by Mr. Wood, and of the list made by yourself from the pamphlet laws, after eliminating the inactive corporations, so far as your information derived from the sources indicated, would lead you?

A Yes, sir; there may possibly be a very few other corporations, that have been created under the general law, that I have got from other sources, but they don't amount to much.

Q I see upon the left-hand margin of the names of these corporations in many instances, dates, such as 1872, 1880, 1883—what do they indicate?

A Those dates are the years in which these corporations got their special charters; other acts of incorporation can be found in the pamphlet laws these years.

Q The date of the incorporation of companies created under the general laws, is not indicated in this list, is it?

A I believe not.

Q State whether you went to Bradstreet and Dun & Co.?

A I went through Bradstreet's book carefully and got their agent, Mr. ———, their agent at Paterson, for the northern part of the State, to go over several counties for me, and I had also an examination made from the book of Dun & Co. in New York.

(Complainant's counsel offers in evidence paper last mentioned [*which is marked Exhibit 9 for complainant*], said paper containing a list of corporations made up from the two preceding lists from which he had eliminated all the corporations believed by him to be inactive.)

(Counsels for defendants object to marking said paper as an exhibit or to the use of this paper in evidence in this cause, on the ground that it is incompetent, irrelevant, and hearsay testimony, made up by the witness from the reports furnished to him by other persons, and conversations had with different persons and reports made to him, embraced in this report by agents employed by him; on the ground, further, that it does not appear by any testimony, to be accurate, with regard to the information it proposes to give, and on the ground that it would not be competent testimony in this case if it was an accurate statement of what it purports to be.)

(Complainant's counsel desires to offer in evidence the following acts of the legislature of N. J whereby corporations were created, which corporations are embraced in this list, marked Exhibit 9 for the complainant.)

(Defendants' counsel object to the offer for the reasons already stated.)

Cross-examination, by defendants' counsel (Coult):

Q Did I understand you to say that you personally examined the lists which were made by Mr. Wood aggregating the amount which he gives in his testimony?

A No, I didn't verify the work.

Q You took certain papers which he gave to you?

A Yes, sir; and assumed those lists were correct.

Q Then, I understand from you that you took the book called "Hood's Index"?

A Yes, sir.

Q Personally?

A Yes, sir.

Q Alone?

A Yes, sir.

Q And you ran through that index to find what corporations you could find?

A I found the title of the corporation in the index and then examined the special act creating it, to find out the amount of capital stock, and where it was located.

Q Then you went from the index to the pamphlet laws?

A Yes, sir.

Q And you found there that certain charters had been granted authorizing certain companies, under certain conditions, to organize?

A Yes, sir.

Q And when organized to issue capital stock?

A Yes, sir.

Q And you set down the authorized capital of those companies?

A I made a list of those corporations, with the authorized capital, and from that list made this one, by striking out certain ones?

Q Do you know personally that the companies named in those acts of incorporation did organize their companies under the charters in each case?

A I have personal knowledge as to some; as to others, I have an acquired knowledge by speaking with other people.

Q I ask you this question specifically. Do you know personally, of your own knowledge—I don't ask you what somebody has told you—you are a lawyer, and you know what is competent testimony—I ask you whether you know, of your own knowledge, or did know, of your own knowledge, that the companies mentioned in your list that you produce here, did organize their companies under the special charters and did issue stock?

A I have personal knowledge as to some of them.

Q How many?

A That I can't say.

Q Is it not true that as to the large majority, and almost the entire number, you have no knowledge whatever, except such as may possibly be derived from the information of others?

A I wouldn't like to say that were true, without looking over the list.

Q Do you know anything personally about the organization of the U. S Medicine Company, down on this list?

A I do not.

Q Do you know whether they ever issued any capital stock?

A I do not, personally.

Q Do you know anything personally about any corporation called the Newark Crucible Company?

A Not personally.

Q The Griffin Manufacturing Co.?

A Yes, sir.

Q Where is it located?

A Newark; that is, I know one of the stockholders who gave me that information.

Q I am asking you of your own personal knowledge?

A Personal knowledge acquired in that way, before this suit; without any reference to this suit, I knew about that corporation.

Q You heard some man tell you that he had stock in the Griffin Manufacturing Company?

A Yes, sir.

Q Do you know anything about the Searle Manufacturing Co.?

A No.

Q Do you know anything about the Stanley Horse Collar Co.?

A Not personal knowledge.

Q Now I have named a half dozen or more of these in the city of Newark, one after the other ; is it not a fact, now, with this sample before you, that the information you have in regard to these companies—the actual existence of these companies—is very slight, and derived almost exclusively from information derived from others ?

A The fact of your being able to select out six companies that I don't know, wouldn't prove that at all.

Q You have no personal knowledge, have you, except in a very limited number of cases, of the amount of the capital stock actually issued by these several corporations, or the value of it ?

A That is true.

Q Nor do you know where the stockholders reside ?

A No, of course not.

GEORGE W. JENKINS.

Sworn and subscribed before me,
this 24th day of Sept., 1886.

A. B. C. SALMON, *Notary Public.*

EXHIBITS FOR COMPLAINANT.

EXHIBIT 1, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

FIRST ANNUAL REPORT

OF THE

State Board of Assessors

OF THE

STATE OF NEW JERSEY,

FOR THE YEAR 1884.

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER
1885

COMPANIES TAXED UPON CAPITAL STOCK.

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Crosswicks and Trenton Turnpike Company	$19,475 00	$19 47
Tinton Falls Turnpike Company	17,200 00	17 20
Gloucester Turnpike Company	15,000 00	15 00
Mullica Hill and Woodbury Turnpike Company	26,875 00	26 87
Mount Holly and Jobstown Turnpike Company	8,000 00	8 00
Haddonfield and Camden Turnpike Company	20,000 00	20 00
Glassboro and Carpenters Landing Turnpike Company	20,000 00	20 00
Beverly and Mount Holly Turnpike Company	6,000 00	6 00
Mount Holly and Moorstown Turnpike Company	11,487 50	11 48
Red Bank and Eatontown Turnpike Company	14,000 00	14 00
Mullica Hill and Woodstown Turnpike Company	15,000 00	15 00
Bordentown and Columbus Turnpike Company	10,000 00	10 00
Bordentown and Crosswicks Turnpike Company	10,500 00	10 50
Trenton and Ewing Turnpike Company	9,000 00	9 00
Bridgeton and Millville Turnpike Company	9,425 00	9 42
Freehold and Englishtown Turnpike Company	8,000 00	8 00
Hopewell and Ewing Turnpike Company	15,900 00	15 90
Williamstown and Good Intent Turnpike Company	11,000 00	11 00
Bridgeton and Deerfield Turnpike Company	7,000 00	7 00
Shiloh Turnpike Company	6,000 00	6 00
Burlington and Beverly Turnpike Company	3,650 00	3 65
Princeton Water Company	50,000 00	50 00
Passaic Water Company	421,250 00	421 25
Raritan Water Power Company	25,000 00	25 00
Millville Water Company	25,000 00	25 00
Dundee Water Power and Land Company	150,000 00	150 00
Belvidere Water Company	16,600 00	16 60

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Hackensack Water Company	600,000 00	600 00
Mount Holly Water Company	7,500 00	7 50
Trenton Water Power Company	100,000 00	100 00
Proprietors of the Morris Aqueduct	50,000 00	50 00
Lake Grove Water Company	1,500 00	1 50
Gloucester Land Company	50,000 00	50 00
American Real Estate Exchange	200,000 00	200 00
Seabright Improvement Company	75,000 00	75 00
Pequannock Land and Building Company	200,000 00	200 00
Jersey City Land and Basin Company	30,000 00	30 00
Camden Dry Dock and Ship Building Company	5,000 00	5 00
Pennsgrove Pier Company	5,000 00	5 00
Newark and Irvington Street Railway Company	100,000 00	100 00
Newark and Bloomfield Street Railway	200,000 00	200 00
Belvidere Delaware Bridge Company	12,350 00	12 35
Milford Delaware Bridge Company	13,400 00	13 40
Alexandria Delaware Bridge Company	12,875 00	12 87
Yardleyville Delaware Bridge Company	26,450 00	26 45
New Jersey Freie Presse Company	5,000 00	5 00
Concert Hall Association	14,175 00	14 17
Kelsey Hat Shaping and Setting Machine Company	300,000 00	300 00
Patent Water and Gas Pipe Company	50,000 00	50 00
American Mechanics' Hall Association	13,000 00	13 00
Paterson Market Company	37,000 00	37 00
Masonic Hall Association, Moorestown	10,000 00	10 00
Kilbourne and Company	2,750 00	2 75
Bordentown Hall Company	7,100 00	7 10

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
New Jersey Ice Company	200,000 00	200 00
Music Hall Association, Orange	50,000 00	50 00
Masonic Hall Association, Woodbridge	15,400 00	15 40
Temperance Hall Association, Trenton	10,000 00	10 00
Ashland House Association	32,500 00	32 50
Navesink Park Company	175,000 00	175 00
D. E. Culver Company	50,000 00	50 00
Enterprise Cranberry Company	8,250 00	8 25
Barney Dumping Boat Company	1,000,000 00	1,000 00
Union Phosphate Mining and Land Company	1,000,000 00	1,000 00
Langdon Mining Company	9,000 00	9 00
Ajax Silver Mining Company	600,000 00	600 00
Julianna Lode Mining Company	5,000,000 00	5,000 00
Mexican National Exploring and Mining Company	500,000 00	500 00
Walker Smokeless Furnace Company	461,200 00	461 20
Point Pleasant Delaware Bridge Company	15,900 00	15 90
White Horse Turnpike Company	27,200 00	27 20
Freehold and Smithville Turnpike Company	11,450 00	11 45
East Brunswick and New Brunswick Turnpike Company	10,000 00	10 00
Freehold and Howell Plank Road Company	6,925 00	6 92
Jersey Spiegel and Iron Company	50,000 00	50 00
Hunterdon County Agricultural Society	10,000 00	10 00
Enterprise Land Company	80,000 00	80 00
Ammunition Manufacturers' Association	1,000 00	1 00
Raritan Woolen Mills Co-operative Association	8,450 00	8 45
Lumberville, Delaware Bridge Company	15,750 00	15 75
Rake Pond Cranberry Company	30,000 00	30 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Merchants' Steamboat Company	51,200 00	51 20
Keyport and Middletown Point Steamboat Company	66,000 00	66 00
Camden and Philadelphia Steam Ferry Company	400,000 00	400 00
Delaware River Transportation Company	36,000 00	36 00
Mexican and United States Development and Operating Company	2,000,000 00	2,000 00
Nichols Land and Cattle Company	79,500 00	79 50
Music Hall Association of Plainfield	40,000 00	40 00
Riley Railway Construction Company	1,500,000 00	1,500 00
Long Branch Water Supply Company	250,000 00	250 00
Passenger Railroad Locomotive Manufacturing Company	500,000 00	500 00
Camden Horse Railroad Company	50,000 00	50 00
Phillipsburg Horse Railroad Company	50,000 00	50 00
Long Branch Ocean Pier Company	135,220 00	135 22
Merchants' Loan and Trust Company	100,000 00	100 00
Standard Cement Company	750,000 00	750 00
Diamond State Engine Manufacturing Company	200,000 00	200 00
Press Printing and Publishing Company	75,000 00	75 00
Gloucester Ferry Company	50,000 00	50 00
Eads Concession Company	267,000 00	267 00
Central Stock Yard and Transit Company	520,000 00	520 00
New Jersey Manure Bailing Company	2,000 00	2 00
Edgewater and New York Land and Ferry Company	2,500 00	2 50
Highland Bridge Company	14,000 00	14 00
Newark and Rosendale Cement Company	250,000 00	250 00
Kaighn's Point and Philadelphia Ferry Company	25,000 00	25 00
Manhattan Rubber Company	6,100 00	6 10
Mexican Gaudalupe Mining Company	700,000 00	700 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Universal Concentrating Company	1,000,000 00	1,000 00
Ocean City Association.	75,000 00	75 00
Newark Oil Company	2 500 00	2 50
Philadelphia Sectional Electric Underground Company	2,000,000 00	2,000 00
Congress Hall Hotel Company	130,000 00	130 00
West Jersey Agricultural and Horticultural Association	1,000 00	1 00
National Storage Company	1,400,000 00	1,400 00
New Jersey Cranberry Company	20,000 00	20 00
Monmouth Park Association	60,000 00	60 00
Monmouth Cranberry Company	10,000 00	10 00
Forked River Cranberry Company of New Jersey	20,000 00	20 00
Binder Milling, Mining and Manufacturing Company	100,000 00	100 00
Ide and Haverstick Company	56,900 00	56 90
Summit Sanitary Company	2,000 00	2 00
Lafayette Masonic Hall Association	30,000 00	30 00
Washburn Steamboat Company	150,000 00	150 00
Bridgeport Steamboat Company	79,500 00	79 50
Taylorsville Delaware Bridge Company	11,500 00	11 50
Paterson Horse Railroad Company	25,000 00	25 00
Newark and South Orange Horse Car Railroad Company	75,000 00	75 00
Union Publishing Company	10,000 00	10 00
Oil, Paint and Drug Publishing Company	150,000 00	150 00
Cape May City Land Company	300,000 00	300 00
Garfield Land Association	18,000 00	18 00
Berkeley Land and Improvement Company	350,000 00	350 00
Point Breeze Ferry and Improvement Company	114,000 00	114 00
Port Monmouth Steamboat Company	25,000 00	25 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Riegelsville Delaware Bridge Company	18,900 00	18 90
Southwestern Land and Cattle Company	500,000 00	500 00
Clifton Land and Building Association	160,000 00	160 00
Ocean Beach Association	60,000 00	60 00
Rutherford Heights Association	90,000 00	90 00
Tolchester Steamboat Company	60,000 00	60 00
Bridgeton and Philadelphia Steamboat Company	10,500 00	10 50
Bridgeton Steamboat Company	26,000 00	26 00
American Hoop Driving Machine Company	120,000 00	120 00
Washington Market Association	50,000 00	50 00
North Farmingdale Cranberry Company	3 000 00	3 00
Marsh Bog Cranberry Company	2,002 50	2 03
Indiana Paint and Roofing Company	2,000 00	2 00
Somerset Agricultural Society	12,350 00	12 35
Camden Courier Publishing Association	9,000 00	9 00
Yellowstone National Park Improvement Company	15,000 00	15 00
Morrow Gold Mining Company	9,000 00	9 00
American Grate Bar Company	451,300 00	451 30
Beaver Dam Cranberry Company	20,000 00	20 00
Newark City Ice Company	200,000 00	200 00
Lakewood Hotel Association	210,000 00	210 00
Hoboken Land and Improvement Company	1,473,800 00	1,473 80
Fort Lee Park and Steamboat Company	165,500 00	165 50
Land and Construction Company of Mexico	100,000 00	100 00
Hygienic Society	8,000 00	8 00
New Jersey Construction Company	32,000 00	32 00
Highland Water Company	500,000 00	500 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Orange and Newark Horse Car Railroad Company	281,800 00	281 80
Newark, Harrison and Kearny Horse Railroad Company	5,000 00	5 00
Eatontown and Seashore Turnpike Company	11,116 00	11 11
Trenton and Allentown Turnpike Company	18,000 00	18 00
Clark Neergaard Company	12,000 00	12 00
Trenton City Bridge Company	46,000 00	46 00
Tuckerton and Long Branch Building, Land and Improvement Company	40,600 00	40 60
Consolidated Cork Company	16,950 00	16 95
Shongum Company	2,000 00	2 00
Evening Journal Association	21,000 00	21 00
Saegersville Slate Company	150,000 00	150 00
Communipaw Coal Company	10,000 00	10 00
Wooton Locomotive Company	200,000 00	200 00
Susquehanna Flint Company	55,000 00	55 00
Cedar Cliff Land Company	15,000 00	15 00
Cassedy Coupling Company, of Camden, N. J.	597,000 00	597 00
Holmdel and Keyport Turnpike Company	15,000 00	15 00
Crystal Rolling Pin Company	100,000 00	100 00
New York Pie Baking Company	150,000 00	150 00
Brielle Land Association, of Jersey City, N. J.	34,550 00	34 55
Atlantic Company for the Culture of Cranberries	189 300 00	189 30
Centre Bridge Company	31,350 00	31 35
Highland Beach Association	30,000 00	30 00
Salem Lecture Hall Company	5,000 00	5 00
F. M. Weiter's Liberty Machine Works	55,000 00	55 00
American Construction Company	2,000 00	2 00
Knickerbocker Guide Company	30,000 00	30 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Gunsight Mining Company	2,000,000 00	2,000 00
Bricksburg Land and Improvement Company	250,000 00	250 00
Yguana Smelting and Mining Company	500,000 00	500 00
Sea View Hotel Company	50,500 00	50 50
Rock Lock Rosendale Cement Company	20,000 00	20 00
Moorestown and Mount Laurel Turnpike Company	10,000 00	10 00
Long Branch and Sea Bright Steamboat Company	33,100 00	33 10
Moorestown Agricultural and Industrial Association	3,170 00	3 17
New Jersey Coast Publishing Company	6,400 00	6 40
New York, Lake Erie, and Western Docks and Improvement Company	604,000 00	604 00
Matawan Propeller Company	9,000 00	9 00
Kearny Land Company	100,000 00	100 00
Trenton Delaware Bridge Company	198,900 00	198 90
Paterson District Telegraph Company	20,000 00	20 00
Omega Copper Mining Company	900,000 00	900 00
Manufacturers' Land and Improvement Company	173,200 00	173 20
Hoboken Free Stores Company	3,600 00	3 60
W. S. Sharp Printing Company	11,000 00	11 00
Frie Presse Printing Association	3,070 00	3 07
Copeland Tacking and Lasting Company	50,000 00	50 00
Columbia Contracting Company	30,000 00	30 00
Pilesgrove Dairy Association	4,380 00	4 38
Citizens' Coach Company	20,000 00	20 00
Saxonia Mining and Reduction Company	27,000 00	27 00
Unionist Gazette Association	20,000 00	20 00
Camden and Blackwoodtown Turnpike Company	13,625 00	13 63
National Color Printing Company	255,410 00	255 41

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Morse Underground Conduit Company	2,335,000 00	2,335 00
Faure Electric Light and Force Company	2,000,000 00	2,000 00
East Cape May Beach Company	130,000 00	130 00
Eagleswood Cranberry Company	99,000 00	99 00
Little Wood River Mining and Smelting Company	300,000 00	300 00
Gogebic Construction and Improvement Company	8,000 00	8 00
Star Machine Company	85,850 00	85 85
Jersey City Printing Company	15,000 00	15 00
Gallilee Fishing Association	5,200 00	5 20
Camden Construction Company	1,000 00	1 00
Stockton Hotel and Improvement Company	215,000 00	215 00
Asbestos Paper Company	40,000 00	40 00
Sudsena Manufacturing Company	50,000 00	50 00
Sparrow Kneader and Mixer Company	100,000 00	100 00
Southern Railroad Construction Company	1,100 00	1 10
Improved Hollow Ware Company	50,000 00	50 00
Riverside Land Association	100,000 00	100 00
Leve and Alden Printing Company	1,000 00	1 00
Bergen Turnpike Company	52,000 00	52 00
Upper Delaware River Navigation Company	130,000 00	130 00
Black Rock and Pacific Company	183,000 00	183 00
Thayre Safety Wedge Elevator Company	400,000 00	400 00
East Orange Water Company	63,850 00	63 85
Bordentown Land Dredging Company	10,080 00	10 08
San Andreas Copper Mountain Mining Company	1,820,000 00	1,820 00
Orne Car Axle Company	850,000 00	850 00
International Dolbear Electric Company	300,000 00	300 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
New Jersey Tube Transportation Company	500,000 00	500 00
Hill National Spark Arrester Company	387,000 00	387 00
Associates of the Jersey Company	100,000 00	100 00
New Jersey Warehouse and Guarantee Company	500,000 00	500 00
Lidalia Land and Improvement Company	100,000 00	100 00
Flemington Water Company	25,000 00	25 00
Cape May and Schellinger's Landing Railroad Company	40,000 00	40 00
Eastern Development Company	152,000 00	152 00
Ocean City Improvement Company	90,750 00	90 75
Transparent Ice Company	59,800 00	59 80
Washburn Car Wheel Company	40,000 00	40 00
Elizabeth and Newark Horse Railroad Company	232,725 00	232 73
Red Bank and Woodbury Turnpike or Macadamized Road Company	14,300 00	14 30
Greenwood Lake Steamboat Company	1,665 00	1 66
Building and Improvement Company of Eatontown, New Jersey	2,750 00	2 75
Florida Mutual Sugar Cane Grove and Mill Company	10,859 80	10 86
Keystone Spring Motor Company	400,000 00	400 00
Masonic Hall Association, Trenton	100,000 00	100 00
Myers Excursion and Navigation Company	50,000 00	50 00
Metzler Railway Signal Lantern Company	77,000 00	77 00
Newark Land Company	600,000 00	600 00
Philadelphia Mining and Smelting Company	300,000 00	300 00
Sachem Printing and Publishing Company	2,000 00	2 00
San Juan and New Jersey Discovery and Mining Company	100,000 00	100 00
Wilson Land Company	18,000 00	18 00
Brick and Stone Water Proofing Company	65,500 00	65 50
Monitor Publishing Company, Woodstown	2,500 00	2 50

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Somerville Water Company	50,000 00	50 00
Anglesea Land Company	100,000 00	100 00
American Trade Agency Company	1,500 00	1 50
Trenton Times Publishing Company	15,000 00	15 00
Trenton Horse Railroad Company	36,100 00	36 10
West Jersey Nursery Company	9,600 00	9 60
Newark Plank Road Company	162,000 00	162 00
Florence Brick and Clay Company	30,000 00	30 00
Blackburn Straw Braid Sewing Machine Company	150,000 00	150 00
Middletown and Keyport Turnpike Company	8,025 00	8 02
Proprietors of the Bridges over the Passaic and Hackensack Rivers	100,000 00	100 00
Mexican Pacific Telephone Company	150,000 00	150 00
Lane Spring Hinge Manufacturing Company	30,000 00	30 00
Neversink Lighterage Company	2,000 00	2 00
Central Cranberry Company	20,000 00	20 00
Millville Stock Building Association	65,000 00	65 00
Mutual Dry Dock and Wrecking Company	21,100 00	21 10
Russell Consolidated Copper Company	2,220,470 00	2,220 47
Victoria Copper Mining Company	517,800 00	517 80
American Lubricating Company	660,000 00	660 00
Presnal Mica Mining Company	16,945 00	16 95
Trenton Hall and Building Association	75,000 00	75 00
National Underground Electric Company of New Jersey	2,482,500 00	2,482 50
Atlantic City Water Company	218,500 00	218 50
National Remedy Company	100,000 00	100 00
New Haven Watch Company	50,000 00	50 00
The Reno Union	5,000 00	5 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Coleville and Carpenter's Point Turnpike Company	5,100 00	5 10
Fairview Land Improvement Company	10 750 00	10 75
Hoboken Coal Company	100,000 00	100 00
Mantua Land and Improvement Company	69,655 00	69 65
Clemont Improvement Company	5,800 00	5 80
Arlington Homestead Association	100,000 00	100 00
Metropolitan Underground Telegraphic, Telephonic and Electric Light Cable Company	500,000 00	500 00
Barnegat City Beach Association	80,000 00	80 00
Camden and Atlantic Land Company	34,600 00	34 60
Keyport Steamboat Company	75,000 00	75 00
New Brunswick, Amboy and New York Steamboat Company	80,000 00	80 00
Palisade Hotel Company	20,000 00	20 00
Cincinnati Gold and Silver Mining Company	1,603,870 00	1,603 87
Carbolic Soap Company	42,000 00	42 00
Consumers Coal and Ice Company	12,300 00	12 30
C. Edgar Sutphen Company	22,000 00	22 00
Pavonia Ferry Company	6,000 00	6 00
Pavonia Horse Railroad Company	45,000 00	45 00
Allentown Dairy Association	4,913 00	4 91
Pacific Placer Mining Company	50,000 00	50 00
Trenton Flint and Spar Company	96,000 00	96 00
San Raphael Cattle Company	149,500 00	149 50
Freehold and Colts Neck Turnpike Company	8,650 00	8 65
Galveston and St. Louis Construction Company	42,500 00	42 50
Cedar Lake Company	7,000 00	7 00
American Phosphate Mining and Land Company	100,000 00	100 00
Boston Mining and Reduction Company	1,000 00	1 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Brooks Snider Consolidated Gold and Silver Mining Company	2,000,000 00	2,000 00
National Bureau of Engraving and Manufacturing Company	500,000 00	500 00
Keyport Propeller Company	12,000 00	12 00
Broadway Land and Building Company	20,000 00	20 00
Impactor Pulverating Company	500,000 00	500 00
Easton Delaware Bridge Company	29,700 00	29 70
Fsuit Growers' Union Co-operative Society (Limited) of Hammonton, New Jersey	2,800 00	2 80
Bay Head Land Company	18,000 00	18 00
Elberon Casino	29,000 00	29 00
Penn Fruit Company	69,000 00	69 00
Bergen County Agricultural Association	5,000 00	5 00
Columbia Delaware Bridge Company	37,750 00	37 75
Lawrence Mineral and Timber Company	52,500 00	52 50
New York Arms Company	1,000,000 00	1,000 00
Eclipse Sash Balance Company	73,040 00	73 04
Lambertville Water Power Company	50,000 00	50 00
Mount Laurel Farmers' Club	1,200 00	1 20
West Shore and Ontario Terminal Compauy	4,723,100 00	4,723 10
Atlantic City Yachtman's Association	1,075 00	1 08
Sea Girt Land Improvement Company	489,200 00	489 20
Spring Lake Beach Improvement Company	383,800 00	383 80
Sea Haven Improvement Company	200,000 00	200 00
American Sectional Electic Underground Company	2,500,000 00	2,500 00
Underground Electric Light and Power Company	203,750 00	203 75
United States Cable Motor Construction Company	100,000 00	100 00
Central New Jersey Land Improvement Company	2,136,400 00	2,136 40
Iowa Improvement Company	20,000 00	20 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Brigantine Improvement Company	200,000 00	200 00
National Anti-Sewer Gas Company	233,300 00	233 30
Elizabethport and New York Ferry Company	147,500 00	147 50
American Dock and Improvement Company	3,000,000 00	3,000 00
Atlantic Highlands Association	138,400 00	138 40
Arlington Improvement Company	14,500 00	14 50
Wide Awake Oil Can and Gas Machine Manufacturing Company	100,000 00	100 00
Reque Burner Company	50,000 00	50 00
Bloomfield Building Association	2,000 00	2 00
Merchants' Telegraph Construction Company	1,000,000 00	1,000 00
The Osborne Company	1,000 00	1 00
Garfield Land Improvement Company of Atlantic County, New Jersey	2,372 00	2 38
The Mitstand Metal Company	150,000 00	150 00
Cahaba Coal and Coke Company	400,000 00	400 00
Anandale Iron Company	25,000 00	25 00
Diamond Band Saw and Stone Machinery Company	11,000 00	11 00
Long Branch Hall Association	3,000 00	3 00
North and South American Steam Navigation Company	10,000 00	10 00
Holly Beach Improvement Company	198,000 00	198 00
Morrisville Grove and Land Association	12,500 00	12 50
Salem Transportation Company	14,000 00	14 00
Smith Transparent Ice Manufacturing Company	100,000 00	100 00
Hudson Tunnel Construction Company	800,000 00	800 00
Rogers Underground Cable and Manufacturing Company	1,000,000 00	1,000 00
Standard Underground Cable Company	1,000,000 00	1,000 00
Chatauqua Gold Mining Company	150,000 00	150 00
Manalapan and Freehold Turnpike Company	8,250 00	8 25

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Mineral Land Improvement Company	1,000 00	1 00
American Railway Construction Company	500,000 00	500 00
Pleasantville and Atlantic City Turnpike or Plank Road Company	16,000 00	16 00
Sea Isle City Improvement Company	96,000 00	96 00
Freehold and Jersyville Turnpike Company	1,000 00	1 00
Virginia Coal and Coke Company	1,000 00	1 00
Cape May and Delaware Bay Navigation Company	180,000 00	180 00
Watanga Valley Iron Company	1,000 00	1 00
Manchester Land Company	654,000 00	654 00
Stewart Medicine Company	100,000 00	100 00
Paterson City Railway Company	28,000 00	28 00
Phillips Electric Cable Manufacturing Company	278,500 00	278 50
Lincoln Land Company	50,000 00	50 00
Dosoris Mining Company	2,000 00	2 00
Milltown Turnpike Company	3,500 00	3 50
Union Trading Company	3,000 00	3 00
American Investment Company	350,000 00	350 00
Passaic Bleaching Company	100,000 00	100 00
Camden, Ellisburgh and Marlton Turnpike Company	51,400 00	51 40
Eureka Lawn Mower Company	93,520 00	93 52
Randolph Mining Company	1,000,000 00	1,000 00
McKirgan Oil Company	75,000 00	75 00
Como Land Company	180,000 00	180 00
Acquackanonk Water Company	200,000 00	200 00
Granger Water Gas Company	500,000 00	500 00
Manalapan and Patten's Corner Turnpike Company	5,600 00	5 60
Merchantville Hall Association	8,000 00	8 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
East Side Land Company	32,300 00	32 30
Van Riper Land Company	7,800 00	7 80
McGeary Patent Cornice Company	7,000 00	7 00
Toms River and Forked River Turnpike Company	10,000 00	10 00
Agricultural and Furniture Company	48,800 00	48 80
Sea Isle City Turnpike Company	6,050 00	6 05
New Jersey Homestead Company	70,000 00	70 00
Richardton Land and Improvement Company	100,000 00	100 00
Godwinville and Paterson Macadamized Road Company	7,400 00	7 40
Lake View Home Company	15,000 00	15 00
Johnson Fire and Burglar Proof Safe Manufacturing Company	259,500 00	259 50
North Hudson County Railway Company	489,660 00	489 66
Metropolitan Construction Company	10,000 00	10 00
Keystone Rubber Company	4,000 00	4 00
Saint Elmo on Sea	75,000 00	75 00
Penn Overland Telephone and Telegraph Company	1,000,000 00	1,000 00
Monmouth County Plank Road Company	26,000 00	26 00
Marlboro and Quinton's Bridge Turnpike Company	7,000 00	7 00
Union Cranberry Company	100,000 00	100 00
Holmdel and Middletown Point Turnpike Company	8,000 00	8 00
Ledger Association	1,605 00	1 61
Solenoid Cable and Electric Construction Company	551,000 00	551 00
North American Construction Company	21,000 00	21 00
Moorestown and Camden Turnpike Company	36,000 00	36 00
British American Ranch Agency Company	1,500 00	1 50
American Glucose Company	13,225,000 00	13,225 00
Chihuahua Mining Company	50,000 00	50 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Monmouth Casino	24,000 00	24 00
Taxpayers Protective Association of New Brunswick, New Jersey	20,000 00	20 00
Pintsch Lighting Company	300,000 00	300 00
Centreton Turnpike Company	7,150 00	7 15
Standard Printing and Publishing Company	50,000 00	50 00
New Jersey Deutsche Zeitung Company	10,000 00	10 00
Poors Railroad Manual Company	10,000 00	10 00
National Construction and Improvement Company	100,000 00	100 00
Perth Amboy Water Company	100,000 00	100 00
International Land Company	84,250 00	84 25
Coleman Manufacturing Company	11,000 00	11 00
Crystal Lake Ice Company	28,499 86	28 50
Northern Pacific Refrigerator Car Company	200,000 00	200 00
National Jersey Red Swine Breeders' Association	150 00	15
Pacific Land Company	13,300 00	13 30
Middletown Turnpike Company	6,945 00	6 95
Milk Producers' Association of Sussex County	10,000 00	10 00
East Newark Land Company	165,115 00	165 12
New Brunswick and Cranbury Turnpike Company	24,600 00	24 60
Evening News Publishing Company	16,300 00	16 30
Arnoux Electric Light Company	40,000 00	40 00
McIntosh Pocket Fire Armor and Respirator Company	1,000 00	1 00
New York and Boston Short Line Railway Construction Company	1,500 00	1 50
Union and Middlesex Agricultural Society	12,500 00	12 50
Saint Nicholas Construction Company	300,000 00	300 00
Wildey Hall Association	12,200 00	12 20
New Jersey Southern Steamboat Company	34,000 00	34 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Champion Light Company	75,000 00	75 00
Patrons Hall Association	2,675 00	2 68
Point Pleasant Land Company	50,000 00	50 00
Big Sandy Land and Manufacturing Company	31,500 00	31 50
Rosenhayn Land and Improvement Company	16,000 00	16 00
Central Cranberry Company	20,000 00	20 00
Bennett Improvement Company	1,000 00	1 00
Middlesex Land Company	100,000 00	100 00
Mohave Mining and Milling Company	75,000 00	75 00
Cornell, Bingham & Company	60,000 00	60 00
New York Car Trust Company	87,500 00	87 50
Union Mutual Investment Company	1,020 00	1 02
Toms River Land Improvement Company	25,000 00	25 00
New Jersey and North Carolina Land and Lumber Company	1,000 00	1 00
Saunders Manufacturing Company	18,900 00	18 90
Davenport Consolidated Mining and Smelting Company	1,000,000 00	1,000 00
United States Land and Investment Company	130,150 00	130 15
The Telemeter Company	200,000 00	200 00
New Jersey Land and Dock Company	3,000 00	3 00
Oakwood Cranberry Association	12,000 00	12 00
Wilcox and Gibbs Guano Company	377,600 00	377 60
Starin's City, River and Harbor Transportation Company	100,000 00	100 00
Ball Anti-Induction Electric Wire Company	893,000 00	893 00
New York, Florida and Havana Construction Company	1,000,000 00	1,000 00
National Optical Company	23,000 00	23 00
Mississippi Valley Construction Company	10,000 00	10 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
The Society for Establishing Useful Manufactures	262,000 00	262 00
Inter-State Construction Company	6,000 00	6 00
Rio Grande and Texas Land and Mining Company	50,000 00	50 00
West India Telegraph and Telephone Company	62,000 00	62 00
Columbia and Panama Telephone and Telegraph Company	24,000 00	24 00
Atlantic City Passenger Railroad Company	25,000 00	25 00
New Jersey Coal Exchange	5,600 00	5 60
Bloomfield Publishing Company	2,000 00	2 00
Roselle Land and Improvement Company	135,000 00	135 00
New Jersey and Sonora Reduction Company	120,000 00	120 00
East Orange Roller Skating Company	25,000 00	25 00
New York File Sharpening Company	20,000 00	20 00
National Railway Patent Waste Company	201,100 00	201 10
Atlantic and Gulf Wrecking Company	25,450 00	25 45
Rutherford Land Company	38,600 00	38 60
Bordenetown Reservoir and Water Company	29,125 00	29 13
Island Heights Association	12,600 00	12 60
Cape Island Turnpike Company	20,000 00	20 00
Iron Steamboat Company	2,000,000 00	2,000 00
Merchants Transportation Company	37,500 00	37 50
City Railway Company, Trenton	42,750 00	42 75
Deal and Squan Bridge Turnpike Company	3,050 00	3 05
American Railway Publishing Company	7,900 00	7 90
Stephens & Condit Transportation Company	100,000 00	100 00
Woodbury Hall Association	7,650 00	7 65
Burnett Mining and Milling Company	60,000 00	60 00

COMPANIES TAXED UPON CAPITAL STOCK.—*Continued.*

NAME OF COMPANY.	Capital Stock.	Tax, one-tenth of one per cent.
Long Beach City Land Company	10,000 00	10 00
Automatic Spring Motor Car and Carriage Company	1,500,000 00	1,500 00
West Jersey Ferry Company	150,000 00	150 00
Allen Paper Car Wheel Company	1,250,000 00	1,250 00
Island Beach Company	175,000 00	175 00
Total	$119,305,339 86	$119,305 36

EXHIBIT 2, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

Length of Main Line, Capital Stock, Bonded Debt, Gross Earnings,

AND TAX FOR 1884.

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TABLE SHOWING LENGTH OF MAIN LINE, CAPITAL STOCK, BONDED DEBT, GROSS EARNINGS AND TAX FOR 1884.

NAME OF COMPANY	Miles, length in New Jersey	Capital Stock.	Bonded Debt.	Gross Earnings.	Tax.
Anglesea Railroad	4.000	$50,000 00			$254 31
Belvidere Delaware Railroad	70.807	993,950 00	$3,444,500 00	$1,344,343 24	22,460 00
Bergen County Railroad	9.900	200,000 00	200,000 00	198,316 40	2,537 08
Camden and Atlantic Railroad	63.100	1,258,050 00	1,445,400 00	558,871 24	12,730 33
Camden and Burlington County Railroad	32.208	381,925 00	350,000 00	192,759 50	4,352 85
Camden, Gloucester and Mt. Ephraim Railroad	4.884	64,400 00	62,100 00		386 75
Cape May and Sewell's Point Railroad	3.200	39,000 00		2,500 00	188 87
Central Railroad of New Jersey	100.277	18,563,200 00	30,230,848 11	6,268,440 47	271,840 74
Charlotteburgh and Green Lake Railroad	4.500	100,000 00		1,878 53	276 43
Chester Railroad	10.020	98,500 00	100,000 00		821 22
Columbus, Kinkora and Springfield Railroad	14.194	65,000 00	131,300 00	14,262 12	884 00
Constables Hook Railroad	2.000	81,400 00		6,540 40	506 50
Cumberland and Maurice River Railroad	21.300	250,000 00	5,000 00	42,383 66	843 84
Delaware Railroad	.348	4,000 00			6 99
Delaware Bay and Cape May Railroad	3.520	30,000 00		11,663 06	264 36
Delaware and Bound Brook Railroad	32.000	1,692,000 00	1,692,000 00	720,654 95	19,330 65
Delaware River Railroad	19.566	140,000 00	65,000 00	37,998 90	730 67
Dover and Rockaway Railroad	4.640	100,000 00	35,000 00	14,310 72	735 68
Easton and Amboy Railroad	64.030	5,250,000 00	6,000,000 00	2,022,607 73	53,115 15
Ferro Monte Railroad	2.220	30,000 00		16,267 10	323 36
Flemington Railroad and Transportation Company	11.673	150,000 00	250,000 00	13,495 87	1,533 84
Freehold and Jamesburg Agricultural Railroad	27.768	273,600 00	498,600 00	140,045 23	3,633 64
Freehold and New York Railroad	14.501	200,000 00	200,000 00	48,250 95	1,720 40
Hackensack Railroad	6.000	118,000 00			556 72
Hibernia Mine Railroad	5.500	200,000 00		40,725 40	1,238 26
Hibernia Underground Railroad	1.037	100,000 00		12,382 92	546 76

LENGTH OF MAIN LINE, CAPITAL STOCK, BONDED DEBT, GROSS EARNINGS AND TAX.—*Continued.*

NAME OF COMPANY.	Miles,* length in New Jersey	Capital Stock.	Bonded Debt.	Gross Earnings.	Tax.
High Bridge Railroad	18.680	$850,000 00		$109,397 92	$4,077 07
Island Heights Railroad	.508	15,000 00			44 02
Jersey City and Bergen Railroad	20.643	250,000 00	$375,000 00	323,511 02	2,824 32
Lake Hopatcong Railroad	5.030	177,300 00		5,417 40	493 38
Lehigh and Hudson River Railroad	47.341	1,100,000 00	960,000 00	97,076 62	4,825 27
Lehigh Valley Railroad	.204				786 82
Lodi Branch Railroad	1.750	60,000 00			80 17
Long Branch and Sea Shore Railroad	11.330	178,100 00	200,000 00	262,765 12	4,433 49
Long Dock Company	2.793	800,000 00	3,000,000 00	54,199 87	68,280 03
Longwood Valley Railroad	10.930	300,000 00		83,807 72	942 61
Manufacturers' Railroad	1.500	79,600 00		4,047 62	1,251 46
Mays Landing and Egg Harbor City Railroad	7.000	28,750 00	37,500 00		206 23
Midvale Railroad	.780	10,000 00			39 00
Millstone and New Brunswick Railroad	6.810	95,750 00		7,464 33	774 69
Monmouth Park Railroad	1.218	27,000 00		3,498 96	141 90
Morris Canal and Banking Company	106.480	2,200,000 00	1,000,000 00		54,698 21
Morris and Essex Railroad	118.244	15,000,000 00	23,073,000 00	4,498,331 09	214,976 70
Mount Holly, Lumberton and Medford Railroad	6.190	95,650 00	75,000 00	8,384 02	748 39
Mount Hope Mineral Railroad	4.000	160,000 00		42,215 35	1,008 18
National Docks Railway	1.920	1,200,000 00		2,144 32	12,719 04
Newark and Bloomfield Railroad	4.230	103,850 00			1,502 41
Newark and Hudson Railroad	5.600	250,000 00	250,000 00	52,905 08	2,752 50
New Jersey and New York Railroad	11.600	2,800,000 00	275,000 00	*105,763 00	1,445 59
New Jersey Southern Railway	77.881	2,590,600 00	1,569,000 00	137,541 67	7,601 89
New York and Atlantic Highlands Railroad	2.800	20,000 00	20,000 00	695 09	286 02

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* Apportioned as to mileage in New Jersey.

LENGTH OF MAIN LINE, CAPITAL STOCK, BONDED DEBT, GROSS EARNINGS AND TAX.—*Continued.*

NAME OF COMPANY.	Miles, length in New Jersey	Capital Stock.	Bonded Debt.	Gross Earnings.	Tax.
New York and Fort Lee Railroad	.240			2,250 89	220 67
New York and Greenwood Lake Railroad	43.510	100,000 00	2,725,865 00	172,968 95	6,116 08
New York and Long Branch Railroad	37.210	2,000,000 00	1,514,746 76	544,389 90	18,443 97
New York, Lake Erie and Western Railroad					11,083 47
New York, Susquehanna and Western Railroad	117.810	*16,864,417 00	*5,501,020 00	*806,012 00	25,195 66
New York, West Shore and Buffalo Railroad	18.487	*1,621,569 00	*1,968,272 00		14,227 29
Northern Railroad of New Jersey	20.000	1,000,000 00	368,000 00	238,802 52	3,469 80
Ogden Mine Railroad	9.970	450,000 00		25,981 48	1,334 41
Passaic and Delaware Railroad	13.990	111,050 00			3,713 71
Paterson and Hudson River Railroad	12.575	630,000 00		298,783 49	6,819 24
Paterson, Newark and New York Railroad	10.830	250,000 00	500,000 00	116,914 33	3,130 19
Paterson and Ramapo Railroad	15.059	298,000 00		297,950 56	7,322 72
Pemberton and Hightstown Railroad	24.602	342,130 00	160,000 00	26,713 31	1,835 26
Pennsylvania Railroad (lessee)					26,756 98
Perth Amboy and Woodbridge Railroad	6.400	57,200 00	100,000 00	53,910 39	1,166 88
Philadelphia and Atlantic City Railroad	54.541	1,200,000 00		170,218 05	2,919 60
Philadelphia and Long Branch Railroad	46.150	750,000 00	750,000 00	59,228 67	3,878 85
Philadelphia, Marlton and Medford Railroad	11.723	102,450 00	74,000 00	17,804 69	912 33
Philadelphia and Reading Railroad (lessee)					2,130 20
Rocky Hill Railroad and Transportation Company	6.540	45,600 00		4,125 70	746 03
Salem Railroad	17.302	180,550 00	100,000 00	26,841 69	1,172 64
South Branch Railroad	15.860	438,300 00		28,790 92	2,273 84
Sussex Railroad	30.750	1,638,600 00	236,500 00	97,901 67	4,709 24
Swedesboro Railroad	10.551	93,350 00	200,000 00	45,483 53	964 85
Toms River Railroad	7.579	240,000 00		8,320 75	278 51

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* Apportioned as to mileage in New Jersey.

LENGTH OF MAIN LINE, CAPITAL STOCK, BONDED DEBT, GROSS EARNINGS AND TAX.—*Continued.*

NAME OF COMPANY.	Miles, length in New Jersey	Capital Stock.	Bonded Debt.	Gross Earnings.	Tax.
Toms River and Waretown Railroad	14.707			9,796 13	515 16
Tuckerton Railroad	30.750	548,057 17	99,862 00	32,505 14	1,072 22
United New Jersey Railroad and Canal Company	209.327	21,240,400 00	20,670,142 75	10,058,817 59	257,827 33
Vincentown Branch Railroad	2.793	25,000 00	15,000 00	2,544 46	204 18
Vineland Railroad	46.800	600,000 00		37,684 59	2,277 49
Warren Railroad	18.270	1,800,000 00	1,350,000 00	514,242 92	16,834 81
Watchung Railroad	4.163	100,000 00			1,109 31
Weehawken Branch Railroad	2.920			28,081 60	3,873 96
West End Railroad	1.730	40,000 00		2,662 07	602 45
West Jersey Railroad	107.094	1,441,750 00	2,752,500 00	938,646 90	17.945 43
West Jersey and Atlantic Railroad	41.592	628,300 00	561,000 00	190,664 70	4,440 43
West Shore and Ontario Terminal Company	.370	4,723,100 00			27.798 32
Williamstown and Delaware River Railroad	15.348	130,000 00		14,291 05	721 19
Woodstown and Swedesboro Railroad	11.177	100,000 00	90,000 00	22,460 59	867 58

Railroads, 1,871.237 miles; Canals, 176,417.

EXHIBIT 3, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

STATE OF NEW JERSEY

REPORT

BY THE

SECRETARY OF STATE

AS

COMMISSIONER OF INSURANCE

For the Year ending December 31,

1884.

PART I.

INSURANCE COMPANIES OTHER THAN LIFE.

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER.
[illegible]

TABLE No. 1.—SHOWING THE LOCATION, DATE OF ORGANIZATION, AMOUNT OF CAPITAL STOCK, GROSS ASSETS, GROSS LIABILITIES, AND NET SURPLUS OVER ALL LIABILITIES, INCLUDING CAPITAL STOCK.

New Jersey Joint Stock Insurance Companies.

NAME OF COMPANY.	Location.	Date of Organization.	Capital Stock.	Admitted Assets.	Liabilities, including Capital.	Surplus over all Liabilities, including Capital.
American	Newark	February 20, 1846	$600,000 00	$1,721,424 28	$876,674 23	$844,750 05
Camden	Camden	March 12, 1841	105,730 00	211,877 84	141,709 13	70,168 71
Firemen's	Newark	December 3, 1855	500,000 00	1,433,645 08	658,297 95	775,347 13
Jersey City	Jersey City	February 10, 1847	200,000 00	316,862 92	255,161 49	61,701 43
Merchants'	Newark	February 18, 1858	400,000 00	1,207,589 39	866,887 33	340,702 06
Mount Holly	Mount Holly	January 21, 1831	100,000 00	195,033 48	161,487 72	33,545 76
National	Elizabeth	August 2, 1865	100,000 00	157,672 17	109,801 71	47,870 46
Newark Fire	Newark	May 14, 1810	250,000 00	681,541 15	383,606 05	297,935 10
New Brunswick	New Brunswick	December 27, 1826	50,000 00	145,670 86	56,114 17	89,556 69
Standard	Trenton	February 22, 1868	100,000 00	173,958 37	146,992 42	26,965 95
Trade	Camden	March 21, 1872	150,000 00	180,838 55	173,461 14	7,377 41
			$2,555,730 00	$6,426,114 09	$3,830,193 34	$2,595,920 75
New Jersey Plate Glass	Newark	April 2, 1862	50,240 00	88,243 28	60,625 92	27,617 36
Total			$2,605,970 00	$6,514,357 37	$3,890,819 26	$2,623,538 11

EXHIBIT 4, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

STATE OF NEW JERSEY.

REPORT

BY THE

SECRETARY OF STATE

AS

COMMISSIONER OF INSURANCE

For the Year ending December 31,

1884.

PART II.

LIFE INSURANCE.

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER.
1885.

TABLE No. 1.

Showing Amount of Capital Stock, Assets, Liabilities, and Surplus as Regards Policyholders of Life Insurance Companies Transacting Business in this State on the 31st day of December, 1884.

NAME AND LOCATION.	Capital Stock.	Assets.	Liabilities.	Surplus as Regards Stock holders
Ætna, Hartford	$1,000,000 00	$29,682,925 85	$23,302,202 62	$6,380,723 23
Berkshire, Pittsfield	25,500 00	3,749,926 51	3,305,659 01	444,267 50
Brooklyn, New York	125,000 00	1,562,160 24	1,326,204 66	235,955 58
Connecticut Mutual, Hartford		53,430,172 76	46,121,706 34	7,308,466 42
Continental, Hartford	300,000 00	2,218,291 74	2,018,879 46	199,412 28
Equitable, New York	100,000 00	57,548,715 68	44,096,473 81	13,452,241 87
Germania, New York	200,000 00	10,857,818 78	9,456,488 95	1,401,329 83
Home, Brooklyn	125,000 00	5,457,587 53	3,951,589 19	1,505,998 34
Homœopathic Mutual, New York	100,000 00	686,265 35	558,641 00	127,624 35
Manhattan, New York	100,000 00	11,046,052 70	8,752,378 07	2,293,674 63
Massachusetts Mutual, Springfield		7,537,743 82	7,045,022 67	492,721 15
Metropolitan, New York	500,000 00	2,304,002 87	1,690,882 62	613,120 25
Mutual, New York		103,583,301 49	91,528,838 36	12,054,463 13
Mutual Benefit, Newark		38,607,396 20	33,193,803 70	5,413,592 50
National, Montpelier, Vt		3,156,256 39	2,337,956 02	818,300 37
New England Mutual, Boston		17,077,072 41	14,580,504 26	2,496,568 15
New York, New York		58,941,739 43	49,045,165 97	9,896,573 46
Northwestern Mutual, Milwaukee		22,497,772 84	17,631,114 15	4,866,658 69
Penn Mutual, Philadelphia		9,644,051 69	7,861,315 92	1,782,735 77
Phœnix Mutual, Hartford	100,000 00	10,537,870 15	9,100,889 78	1,436,980 37
Provident Life and Trust, Philadelphia		9,149,209 74	7,195,000 43	1,954,209 31
Provident Savings, New York	100,000 00	180,291 06	64,064 00	116,227 06
Prudential, Newark	115,000 00	752,877 71	423,351 00	329,526 71
State Mutual, Worcester		3,549,301 46	2,827,648 00	721,653 46
Travelers, Hartford	600,000 00	7,813,690 09	5,455,171 69	2,358,518 40
Union Mutual (of Maine), Portland		6,311,401 66	5,593,167 50	718,234 16
United States, New York	440,000 00	5,154,412 30	4,458,528 75	695,883 55
Washington, New York	125,000 00	7,273,649 85	6,474,141 61	799,508 24
Total	$1,055,500 00	$490,311,958 30	$409,396,789 54	$80,915,168 76

EXHIBIT 5, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

ANNUAL STATEMENTS

OF THE

Banks and Savings Institutions

OF THE

STATE OF NEW JERSEY,

FOR THE YEAR

1885.

◆

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER.
1886.

TABLE No. 1.

SAVINGS BANKS, 1885.	Location.	Assets.	Liabilities.	Surplus over Liabilities.	Income	Disbursements	Amount due Depositors.	Deposited in 1884.	Withdrawn in 1884.	No. of Depositors Jan. 1, 1885
Bloomfield Savings Institution	Bloomfield	$88,015 97	$83,495 41	$4,520 56	$53,093 36	$56,209 78	$83,495 41	45,612 12	$30,631 42	381
Burlington Savings Institution	Burlington	315,804 74	253,340 27	62,464 47	97,351 13	107,012 19	253,340 27	82,888 70	79,409 56	1,474
Camden Safe Deposit and Trust Co	Camden	*1,228,182 79	1,132,471 96	95,710 83	11,053,730 87	11,009,468 78	1,017,259 58	8,835,843 68	8,922,159 92	3,273
Dime Savings Bank	New Brunswick	168,685 01	166,530 55	2,154 46	165,109 68	153,816 75	166,530 55	88,944 91	90,748 45	1,253
Dime Savings Bank	Woodbridge	4,648 59	4,648 59		51 28	18 53	4,622 39	……	……	157
Dime Savings Institution	Newark	643,250 10	617,137 37	26,112 73	1,344,595 48	1,715,263 95	617,137 37	302,245 54	402,043 28	7,371
Elizabethport Savings Bank	Elizabeth	6,572 62	4,753 01	1,819 61	981 24	792 26	4,753 01	……	753 40	213
Elizabethtown Savings Institution	Elizabeth	398 57	328 07	70 50	30,065 47	32,604 53	328 07	2,757 97	32,560 68	13
Fifth Ward Savings Bank	Jersey City	58,068 62	57,638 30	430 32	65,058 55	66,225 14	57,638 30	40,684 22	26,659 77	462
Franklin Savings Institution	Newark	187,628 96	185,905 07	1,723 89	236,588 88	178,458 75	185,905 07	212,194 07	26,289 00	456
Germania Savings Bank	Jersey City	206,580 45	206,187 47	392 98	534,049 83	535,137 25	191,687 47	494,996 14	486,420 02	935
German Savings Bank	Newark	214,293 24	212,417 65	1,875 59	220,949 34	193,183 93	212,417 65	198,790 72	64,735 53	733
Half Dime Savings Bank	Orange	439,578 86	409,555 75	30,023 11	464,210 83	480,446 12	409,555 75	313,294 71	299,319 41	2,376
Hoboken Bank for Savings	Hoboken	1,910,170 84	1,806,494 61	103,676 23	1,050,078 32	1,033,366 89	1,806,494 61	807,546 35	794,272 15	6,243
Howard Savings Institution	Newark	6,807,341 59	6,530,434 54	276,907 05	4,677,724 99	4,634,681 57	6,530,434 54	3,029,543 94	2,442,447 79	17,011
Hudson City Savings Bank	Jersey City	473,372 97	468,876 30	4,496 67	635,422 25	615,881 55	468,876 30	602,998 33	583,296 15	2,287
Miners' Savings Bank	Dover	1,186 37	1,186 37		6 25	375 70	1,186 37	……	369 45	12
Morris County Savings Bank	Morristown	640,105 55	611,226 56	28,878 99	332,910 98	349,639 42	611,226 56	265,130 14	282,678 42	2,362
New Brunswick Savings Institution	New Brunswick	1,442,336 36	1,296,110 78	146,225 58	586,646 90	743,277 19	1,296,110 78	408,402 38	477,903 64	4,008
Orange Savings Bank	Orange	562,327 38	531,525 23	30,802 15	1,055,163 89	1,058,003 93	531,525 23	984,944 94	987,191 56	3,062
Paterson Savings Institution	Paterson	†2,169,094 49	2,048,003 88	121,090 61	2,070,084 86	2,086,026 32	1,985,503 88	1,139,034 25	1,393,698 16	7,842
Perth Amboy Savings Institution	Perth Amboy	77,761 60	72,052 62	5,708 98	65,589 33	74,023 47	72,052 62	58,515 49	64,805 05	593
Princeton Savings Bank	Princeton	123,021 61	116,535 32	6,486 29	85,256 09	84,008 28	116,535 32	58,758 55	61,897 11	607
Provident Institution for Savings	Jersey City	5,628,038 95	5,120,423 42	507,615 53	2,241,830 67	2,220,692 80	5,120,423 42	1,463,739 20	1,798,996 17	13,997
Rahway Savings Institution	Rahway	60,560 67	58,980 37	1,580 30	52,884 50	53,952 07	58,980 37	48,379 82	41,601 27	280
Raritan Savings Bank	Raritan	99,831 07	94,946 29	4,884 78	69,890 55	64,691 57	94,414 50	30,970 94	27,088 09	435
Security Savings Bank	Newark	525,381 60	521,638 17	3,743 43	716,124 93	658,905 79	521,638 17	565,834 73	48,168 25	1,091
Somerville Dime Savings Bank	Somerville	110,356 97	99,302 15	11,054 82	42,925 44	43,040 08	99,802 15	9,839 26	17,651 19	433
Trenton Saving Fund Society	Trenton	1,647,751 65	1,454,228 98	193,522 67	1,055,431 75	1,180,158 09	1,454,228 98	820,419 61	936,733 37	7,532
Union County Savings Bank	Elizabeth	44,493 68	44,412 27	81 41	96,005 85	92,369 75	44,412 27	80,637 87	36,571 73	399
Total		$25,884,891 87	$24,210,787 33	$1,674,104 54	$29,199,782 99	$29,521,732 43	$24,017,916 99	$20,992,258 58	$20,457,099 97	87,346

*Including capital stock. †Including capital stock, $62,500 00

TABLE No. 2.—Classification of Assets.

SAVINGS BANKS, 1885.	Location.	Value of Real Estate	Loans on Bonds and Mortgages.	Interest on Fond and Mortgage Loans.	United States Bonds.	Other Stocks and Bonds.	Loans on Collaterals.	Cash on hand and in Bank.	All other Assets	Total.
Bloomfield Savings Institution	Bloomfield	....	$65 800 00	$1,949 54	$12,700 00	....	$1 200 00	$6,132 18	$234 25	$88 015 97
Burlington Savings Institution	Burlington	$16,593 37	40,000 01	908 57	95,540 00	$155,978 58	1,250 00	4,523 66	1 010 55	315,804 74
Camden Safe Deposit and Trust Co.	Camden	18 563 43	108 271 40	2,348 63	....	161,405 00	388,033 90	197,656 33	351 904 10	1,228,182 79
Dime Savings Bank	New Brunswick	500 00	73,259 06	726 37	10,500 00	34 400 00	27 230 00	20,483 83	1,585 75	168 685 01
Dime Savings Bank	Woodbridge	1,500 00	250 00	200 00	....	950 00	....	....	1,898 59	4,648 59
Dime Savings Institution	Newark	....	157,745 00	4,016 95	339,000 00	95,850 00	....	44,398 15	2,290 00	643,300 16
Elizabethport Savings Bank	Elizabeth	1 200 00	1,900 00	201 13	610 00	1,000 00	....	795 01	866 48	6,572 62
Elizabethtown Savings Institution	Elizabeth	....	....	....	....	....	....	398 57	....	398 57
Fifth Ward Savi gs Bank	Jersey City	....	27,900 00	469 50	13,660 00	11,400 00	....	4,156 62	482 50	58,068 62
Franklin Savings Institution	Newark	....	20,200 00	208 64	91,406 25	10 000 00	6,800 00	58,130 13	883 94	187 628 96
Germania Savings Bank	Jersey City	34 500 00	45,600 00	1,497 69	....	87,500 00	100 00	13,041 43	24,341 83	206 580 45
German Savings Bank	Newark	24,900 00	69 925 00	1,480 22	73,800 00	....	....	42,734 02	1,454 00	214 293 24
Half Dime Savings Bank	Orange	4,000 00	227,613 00	3,465 11	116,250 00	49,058 13	26,123 00	12 354 09	715 53	439 578 86
Hoboken Bank for Savings	Hoboken	....	996,024 00	14 398 41	145,060 00	706,765 88	....	37,332 58	10,649 97	1,910,170 84
Howard Savings Institution	Newark	338,800 29	1,332,629 50	40 221 63	4,854,531 25	42,785 70	2 413 88	168,610 03	27,359 31	6,807 341 59
Hudson City Savings Bank	Jersey City	92,450 00	135,808 00	7,465 55	35 940 00	141,916 59	8,200 0	43,530 32	8,062 51	473 372 97
Miners' Savings Bank	Dover	....	....	....	....	....	....	186 37	1,000 00	1,186 37
Morris County Savings Bank	Morristown	200 00	403,953 00	8,655 15	97,027 25	86 050 00	19,875 00	23,726 16	618 99	640,105 55
New Brunswick Savings Institution	New Brunswick	33 150 00	351,239 43	3 943 84	291,290 00	500 319 44	195 060 00	62 806 49	4,527 16	1,442,336 36
Orange Savings Bank	Orange	76,960 00	226 051 00	17 399 43	74,266 75	86 150 00	35 054 50	32 935 40	13 510 30	562 327 38
Paterson Savings Institution	Paterson	32,750 00	862 130 00	12 852 69	443,763 08	484,959 46	280 930 14	42 418 47	9,290 64	2,169 094 49
Perth Amboy Savings Institution	Perth Amboy	15,139 97	27,620 00	643 39	643 39	23,365 83	....	10,199 99	792 42	77,761 60
Princeton Savings Bank	Princeton	8,185 05	72 230 00	1,623 88	1,260 00	18 344 47	7,650 00	10,681 98	3 046 23	123,021 61
Provident Institution for Savings	Jersey City	206,725 96	2,761 753 50	130,569 88	2,096,500 00	181,530 00	132 600 00	101,642 58	16 717 03	5,628,038 95
Rahway Savings Institution	Rahway	....	5,000 00	....	52,030 60	....	....	3 530 67	....	60 560 67
Raritan Savings Bank	Raritan	3 000 00	50 525 00	2 245 45	15,275 75	15 080 00	4 300 00	8 539 37	865 50	99 831 07
Security Savings Bank	Newark	....	84,450 00	583 32	245 468 75	154 312 50	1,600 00	57,219 14	1,747 89	525 381 60
Somerville Dime Savings Bank	Somerville	....	....	....	48,750 00	51 309 50	7,000 00	2 722 27	575 20	110,356 97
Trenton Saving Fund Society	Trenton	22,000 00	345,575 00	4,506 34	866 450 00	285 328 00	81 490 00	31 744 19	10,658 12	1,647,751 65
Union County Savings Bank	Elizabeth	....	8,600 00	147 58	19 500 00	12 300 00	....	3,636 10	310 00	44,493 68
Total		$931,118 07	$8,482 061 90	$262 579 89	$10,040,519 09	$3 398 059 08	$1,226 910 42	$1 046 266 13	$497,377 29	$25,884,891 87

EXHIBIT 6, FOR COMPLAINANT.

SEPTEMBER 21, 1886.

A. B. C. S., Notary Public.

ANNUAL REPORT

OF THE

Comptroller of the Treasury

OF THE

STATE OF NEW JERSEY,

FOR THE YEAR ENDING OCTOBER 31, 1885

WITH ABSTRACTS OF THE AMOUNT OF RATABLES

AND

FINANCIAL STATEMENTS FROM COUNTIES,
TOWNSHIPS, ETC

TRENTON, N. J.:
JOHN L. MURPHY, STATE PRINTER.

1886.

SUMMARY of Abstracts of the Several Counties for the year 1885.

COUNTIES.	Acres.	Valuation of Real Estate.	Valuation of Personal Estate.			Debt.			Total Valuation Taxable.	Polls.	Poll Tax.	State Tax		County Tax.	Bounty Tax.	Road Tax.	Poor Tax.
			Bond and Mortgage.	Other Personal.	Total Personal.	Bond and Mortgage.	Other Debt.	Total Debt.				General.	School.				
Atlantic	251,421¾	$4,488,551	.....	.....	$714,990 00	$118,100	.....	.....	$5,565,153 50	5,078	.....	.....	$12,809 76	$28,073 47	.....	.....	$2,700 01
Bergen	135,154	13,513,632	$185,000	$2,045,971	2,220,971 00	13,250	$199,110	$212,360	15,532,243 00	8,393	$8,393	.....	31,182 60	65,100 69	$30,784 00	$46,950	8,000 00
Burlington	385,641	21,213,795	2,977,331	3,088,021	8,022,870 00	3,028,451	717,806	4,832,048	25,399,764 00	14,084	12,472	.....	64,896 31	115,111 66	.....	.....	.....
Camden	.....	19,897,393	.....	.....	2,471,998 00	.....	.....	208,880	22,160,511 00	.....	.....	.....	56,335 40	148,864 90	.....	.....	.....
Cape May	93,522	3,257,844	.....	.....	526,593 00	.....	.....	.....	3,784,337 00	2,252	2,022	.....	8,838 47	17,775 00	.....	6,900	625 00
Cumberland	256,129	10,992,725	1,833,823	2,382,865	4,399,188 00	1,263,232	1,297,207	2,613,539	12,745,000 00	8,712	7,826	.....	31,838 51	40,000 00	.....	16,900	.....
Essex	.....	97,976,720	.....	.....	22,609,942 00	.....	.....	1,957,594	118,616,000 00	36,654	.....	.....	.....	.....	.....	.....	.....
Gloucester	196,666	12,297,735	1,368,257	1,584,920	5,265,150 00	1,480,135	493,661	3,044,406	14,518,479 00	7,409	6,676	.....	36,793 48	45,800 00	.....	18,125	1,475 00
Hudson	.....	95,634,127	.....	.....	6,974,966 34	.....	.....	.....	102,609,093 34	.....	.....	.....	254,740 24	513,455 00	.....	.....	.....
Hunterdon	260,505	18,059,808	.....	.....	10,494,788 00	.....	.....	7,608,2[illegible]3	20,946,343 00	10,077	9,166	.....	53,639 48	75,000 00	.....	.....	.....
Mercer	130,918	26,320,024	1,704,148	2,938,531	10,516,070 00	2,384,170	933,750	4,934,117	32,079,632 00	2,943	13,826	.....	81,714 94	90,000 00	.....	13,800	10,700 00
Middlesex	.....	16,278,915	416,650	1,956,241	3,708,797 00	273,250	40,355	1,347,191	18,605,000 00	.....	.....	.....	48,028 58	121,200 00	.....	.....	.....
Monmouth	242,367	28,693,315	.....	.....	8,838,873 00	.....	.....	5,911,861	33,100,100 00	6,130	9,354	.....	80,434 42	153,532 83	.....	.....	.....
Morris	263,506	17,517,244	.....	.....	4,474,780 00	.....	.....	1,622,782	20,369,242 00	11,787	10,768	.....	52,450 92	75,000 00	.....	46,716	2,500 00
Ocean	281,051	3,948,707	.....	.....	957,508 00	.....	.....	770,739	4,130,476 00	3,449	3,449	.....	31,551 00	35,000 00	.....	.....	.....
Passaic	99,918	25,591,931	.....	4,719,910	4,719,910 00	.....	.....	.....	30,312,636 00	14,066	14,066	.....	77,337 26	135,000 00	.....	.....	.....
Salem	194,950	11,276,002	.....	.....	6,868,642 00	.....	.....	3,905,553	14,239,091 00	6,617	6,004	.....	35,864 00	49,136 00	.....	.....	.....
Somerset	183,210	13,923,626	.....	6,930,284	.....	.....	.....	4,403,910	16,450,060 00	6,630	6,630	.....	41,819 00	55,000 00	.....	31,200	11,900 00
Sussex	295,995	8,912,239	.....	.....	4,644,040 00	.....	.....	3,191,026	10,365,253 00	5,795	5,170	.....	.....	*68,811 2[illegible]	.....	.....	.....
Union	.....	21,965,293	.....	.....	3,687,902 00	.....	.....	770,195	24,883,000 00	10,853	.....	.....	63,338 43	130,000 00	.....	.....	.....
Warren	206,398	16,135,277	.....	.....	6,663,002 00	.....	.....	3,671,077	19,127,202 00	9,591	8,726	.....	49,730 64	55,468 81	.....	2,400	350 00
Total		$487,894,933			$118,790,980 34				$565,537,955 84								

*School and County Tax.

Exhibit No. 8, for Complainant.

Valuation of Real Estate	$74,189,010
" " Personal Estate	18,730,160
" " Indebtedness	1,419,888
Total Valuation	$91,499,282

Bank Shares included in the above as personal:

Amount	$2,601,887
Indebtedness	25,375
Total	$2,576,512

Exhibit No. 9, for Complainant.

ATLANTIC COUNTY.

	Capital.
Nescochague Manufacturing Company	$200,000
Atlantic City Gas and Water Company	218,500
Atlantic City Ocean Pier Company	62,500
Incandescent Light Company	50,000
United States Hotel Company	40,000
Pleasant Mills Paper Company	125,000

BERGEN COUNTY.

Hudson River Chemical and Dye Wood Co.	300,000
Pallisade Land Company	100,000
Englewood Dock and Turnpike Company	
Bergen County Gas Light Company	300,000
Hackensack Gas Light Company	50,000
The R. P. Terhune Manufacturing Company	100,000
Boiling Spring Bleach'g, Dyeing & Chem'l Wks.	100,000
The Law Telephone Company	
The N. Y. and Western Land Investment Co.	250,000
The J. Davenport Pickle Works	5,000
Morrison Manufacturing Company	10,000
The Snyder Manufacturing Company	50,000

	Capital.
The Knapp Real Estate Manual Company.....	100,000
The Dunseitte Improvement Company........	2,000
Mineral Cooking Crockery Company.........	100,000
The Mehrhof Brothers Brick Manufacturing Co.	300,000
Conklin Brothers Company..................	10,000
Lodi Chemical Company.....................	75,000

BURLINGTON COUNTY.

Mount Holly Gas Light Company.............	30,000
Alden Fruit Drying Company	15,000
H. B. Smith Machine Company...............	100,000
The Moorestown Agricultural and Industrial Society..............................	
The Burlington Stove and Heater Company..	25,000
The Lumberton Shoe Company...............	20,000
The International American Engraving Co.,	175,000
The Burlington Thread Company	40,000
The Vincentown Shoe Company	10,000
McNeal Pipe and Foundry Company..........	500,000
The Concert Hall Association of Mount Holly.	25,000
Penn Steam Towing & Transportation Company, Bordentown.....................	300,000
Riverside Canning Company....	750,000
1873 The Florence Iron Works..............	350,000

CAMDEN COUNTY.

Camden Woolen Mills..	240,000
Camden Iron Works..........................	300,000
Camden Democratic Co-operative Association.	50,000
Esterbrook Steel Pen Manufacturing Company.	300,000
The Gloucester Manufacturing Company......	100,000
Gloucester Iron Foundry Machine Company...	500,000
Gloucester Gingham Mills...................	100,000
Washington Manufacturing Company.	100,000
1872 Gloucester Iron Works..................	300,000
New Jersey Chemical Company.........	100,000
The River Iron Company..............	50,000
The U. S. Fertilizing and Chemical Company..	1,000,000
The Farmers' Market Company	100,000
1875 South Jersey Telegraph Company.......	
The River Dock and Warehouse Company.. ..	100,000
The Gloucester City Printing and Publishing Co.	20,000
1848 Camden Gas Light Company............	300,000
1850 Odd Fellows' Hall Asso. of Camden....	30,000
1853 Camden and Atlantic Land Company....	100,000

		Capital.
1866	Camden Building and Land Improvement Company	200,000
	Camden & Philadelphia Steamboat and Ferry Co.	10,0000
1853	Camden & Gloucester City Turnpike Co.	
	Manufacturers' Land & Improvement Co.	
	Camden Horse Railroad Co.	50,000
	Gloucester City Gas Light Co	75,000
1876	The Citizens' Coach Company	20,000
1878	The Tolchester Steamboat Company	30,000
1879	The Kirkwood Marl and Fertilizing Co.	14,000
1879	The Waterford Land Co.	50,000
1879	The West Paper Manufacturing Co.	100,000
1879	The National Bureau of Engraving and Manufacturing Co.	500,000
1879	Chas. F. Coffrey Co	100,000
1880	Ciccinnatto Gold and Silver Mining Co.	2,000,000
1880	The Doughten & Sayre Organ Co.	100,000
1881	International Button Hole Machine Co.	500,000
1881	American Developing and Mining Investment Co.	1,000,000
1881	The Railroad Safety Dock and Signal Co.	1,000,000
1881	The Clear Grit Mining Co. of Montana	600,000
	Eureka Silver Mining Co	1,000,000
1881	The Tombstone Water Co. of Arizona.	500,000
1881	The Pennsylvania Underground Electric Company	1,000,000
1881	The Electric Light and Power Co. of Camden, N. J.	50,000
1882	Applegate's Invisible Electric Floor National Alarm Manufacturing Co.	1,000,000
1882	N. J. Coast Publishing Co. of Camden, N.J.	15,000
1882	The Courier Publishing Association of Camden, N. J.	15,000
1882	Anti-Sewer Gas Co.	125,000
1882	Hill National Spark Arrester Co	500,000
1882	The Sugar and Condensed W Co.	200,000
1882	Camden Woolen Mills Co.	100,000
1883	The Standard Heat and Light Co.	300,000
1883	Sterling Paper Bag Co. of Camden	100,000
1883	Wood Manufacturing Co.	100,000
1883	Clay Commercial Telephone Co.	2,500,000
1883	M. A. Furbush & Son Machine Co.	200,000
1883	Indiana Paint and Roofing Co	2,000
1884	The Enterprise Bronze Co.	200,000
1885	The Medicated Tablet and Lozenge Co.	100,000
1885	Elmer Glass Manufacturing Co.	16,000

		Capital.
1885	Citizens' Gas Improvement Co.	500,000
1885	The Thomas Tunis Manufacturing Co.	50,000
1885	The Laurel Hill Slate Co.	125,000
1885	The Philadelphia Fruit Company	250,000
1885	Sollen's Shoe Man'f'g Co. of Camden	60,000
1885	Atlantic City Ocean Pier Co.	
1885	The Pfeil & Golz Company	50,000
1885	The D. K. Joslin Co.	50,000
1885	Anderson Preserving Co.	250,000
1885	Wanamaker & Brown	400,000
1885	The John H. Bannihr Egg Harbor Wine Co.	200,000
1885	The Thomas J. Parke Co.	2,500
1886	The Harvey Cedars Beach Company	90,000
1886	Scott & Walker Paper Co.	50,000
1886	The Washington Manufacturing Co.	750,000
1886	Mount Ephraim Land & Improvement Co.	35,000
1886	The D. K. Joslin Co., name changed to H. McCully & Co.	
1886	The Cape May & N. J. Improvement Co.	100,000
1886	Chlorine Soap Co.	10,000
1886	Crystal Glass Manufacturing Co.	12,000
1886	Selser Bu. Co.	50,000
1886	The Clementon Hall Association	2,000
1886	Gilbert & Bacon	24,000
1886	Crystal Glass Manufacturing Co.	20,000
	Brigantine Improvement Co.	25,000
1882	The Howard Watch Case Co.	10,000
1884	The Camden Land and Improvement Co.	500,000
1884	The Vigo Bag Treasure Co.	300,000
1884	The Pino Palmino Co.	100,000
1884	The Globe Telephone Co. of N. J.	500,000
1886	Sparks Medicinal Co.	10,000
1885	The Day Sewed Shoes Manufacturing Co.	500,000
	American Dredging Co.	500,000
	Delaware Water Gap Pulp and Paper Co.	125,000
	Highland Worsted Mill	200,000
	West Jersey Paper Manufacturing Co.	75,000
	Anconia Printing Co.	200,000
	U. S. Chemical Co.	200,000
	Gloucester Gas Light Co.	75,000

CAPE MAY COUNTY.

	Capital.
Somer's Point Fish, Oil and Guano Co........	100,000
Seagrove Association of the Lower Township of the county of Cape May..................	150,000
Cape May Electric Light Co..................	50,000
Cape Island Gas Co.........................	75,000
Cape May Ocean Pier Co.....................	75,000
Knickerbocker Ice Co.......................	750,000
Rio Grande Sugar Co........................	1,000,000

CUMBERLAND COUNTY.

Cumberland Nail and Iron Co.................	500,000
Cohansey Glass Manufacturing Co.............	500,000
Eastlake Woolen Co.........................	60,000
Millville Manufacturing Co..................	450,000
Millville Glass and Manufacturing Co.........	100,000
Bridgeton Gas Light Co......................	31,040
Millville Gas Light Co.......................	40,000
Vineland Gas Light Co.......................	50,000
Cumberland Glass Manufacturing Co...........	40,000
Clark Window Glass Co......................	20 000
Ferracute Machine Co.	50,000
American Fishing and Preserving Co..........	10,000
Del. & Atlantic Telegraph and Telephone Co...	10,000
West Jersey Packing Company.................	200,000

ESSEX COUNTY.

	Baxter Steam Boiler and Engine Manufacturing Company, Newark..................	250,000
	Clark Thread Company........................	1,500,000
	Gould Machine Company, Newark...............	150 000
	The New Jersey Manufacturing Co. of Newark.	100,000
	The Newark Lime and Cement Company......	150,000
	Newark Chemical Works......................	250,000
	Montclair Gas and Water Company............	115,000
	The Passaic Chemical Company................	500,000
1873	Essex Ice Company......................	250,000
1874	Hewes & Phillips Iron Works..........	500,000
	The North Belleville Quarry Company..	250,000
	T. P. Howell & Co......................	300,000
1869	Citizens' Gas Light Company, of Newark.	1,000,000
1845	Newark Gas Light Company.............	1,000,000
1865	Orange Water Company—$100,000.......	400,000
1871	The Newark Tea Tray Company........	43,000
	The Newark Celluloid Brush Company, pd. $10,000	100,000

		Capital.
1880	The Ballard & Minchin Manufacturing Company, Newark, pd. $10,000	20,000
1880	The Weston Dynamo Electric Machine Company, increased capital stock to. . (Name changed to Weston Electric Light Company.)	200,000
1878	The Fisher Varnish Company, Newark, pd. $20,000	100,000
1879	Eastwood Wire Manufacturing Company, Belleville	
	The Waddell Manufacturing Co., Newark,	50,000
1857	The Belleville Free Stone Co., Belleville,	100,000
1864	Goddard & Brother M'f'g Co., Newark. .	50,000
1866	Newark City Ice Company, pd. $12,000. . .	200,000
1867	The Rubber Coated Harness Trimming Company, Newark, pd. in $7,000	120,000
1868	Tomlinson Spring Co., increase of capital to	75,000
1870	The Jersey Land Improvement Co., N. Y.,	500,000
1875	The Eagle M'f'g Co., Newark, c. $17,500,	25,000
1876	Domestic Sewing Machine Co., Newark, c. $2,000	200,000
1877	The Lignoid Manufacturing Co., Newark,	150,000
1877	Newark Brown Stone Co., $20,000	200,000
1878	The Consolidated Express Co., Newark. .	50,000
1878	The Underwriters' Protective Association, Newark, c. $2,000	4,000
1879	Newark Boot and Shoe Heeling Machine Company	100,000
1878	Allen Patent Car Wheel Co	
1880	Allen Paper Car Wheel Co., Bloomfield, c. $2,000	1,250,000
1880	The Gilbert Lock Co., Newark, c. $12,000.	50,000
1880	The Green Stove Co., Newark. c.	500,000
1880	The Domestic Telegraph and Telephone Co. of Newark, N. J., increased capital stock to	100,000
1880	The New Jersey Zinc and Iron Co., Newark, all paid	3,040,000
1880	Paas Dye Company, Newark, c. $1,000. . .	20,000
1880	The Newark Filtering Co., c. $3,000	300,000
1880	American Bronze Powder Manufacturing Co., Caldwell. c.	50,000
1881	The Medford Fancy Goods Company, Newark, c. $4,000	10,000
1881	The Newark Electric Light and Power Co., c. $1,000	1,000,000

		Capital.
1881	Newark Quarry Co., c. $30,000	50,000
1881	National Railway Patent Waste Company, Bloomfield, c. $2,000	201,000
1881	The Domestic Manufacturing Co., Newark, c. $2,000	200,000
1881	The Backus Water Motor Co., Newark, c. $25,000	75,000
1881	Durand M'f'g Co., Newark, c. $5,000	200,000
1881	The Lake Erie & Ohio River Construction Company, Bloomfield	1,500,000
1881	The Underhill Manufacturing Co., Franklin, c. $21,000	30,000
1882	The American Merchants Mutual Protective Association, Newark, c. $2,000	25,000
1882	The Waddell Manufacturing Co., Newark, c. full paid	10,000
1882	The Clough Manufacturing Co., full paid,	100,000
1882	Peters & Calhoun Co., increase capital to	100,000
1882	Crump Label Co., Montclair, full paid	50,000
1883	The L. Graf's M'f'g Co., Newark, c. $1,000,	25,000
1883	J. M. Quimby & Co., Newark, c. $20,000	75,000
1883	Peerless M'f'g Co., Newark, c. $22,000	50,000
1883	Hottenroth Electric Co., Newark, paid up,	100,000
	New Jersey Coal Exchange, Newark	15,000
1883	P. Ballantine & Sons, Newark, full paid	1,000,000
1883	Romer & Co., Newark, c. $25,000	50,000
1883	The Bloomfield Building Association, Bloomfield, c. $1,000	2,000
1883	The Silo and Artificial Stone and Marble Works of New Jersey, c. $1,000	25,000
1883	Haid's Electric Storage Co., Newark, full paid	100,000
1883	The Williams Tension Wheel Co., Newark, full paid	100,000
1883	Cole's Chemical Co., Newark, c. $24,000	100,000
1883	The Brewster Cocoa Co., Newark, full paid.	6,000
1883	The Watts Campbell Co. Newark, c. $12,000	300,000
1883	The Essex Paper Co., Bloomfield, c. $14,000	40,000
1883	C. Edgar Sutphen Co., Bloomfield	22,000
1883	Cornell, Bingham & Co., Bloomfield, c. $15,000	85,000
1883	Journal of Fabrics Publishing Co., Bloomfield, paid up	43,000
1883	No Name Hat M'f'g Co., Orange c. $55,000	75,000
1884	The Cahoone Vorhees M'f'g Co., Newark, full paid	20,000

		Capital
1884	The Hudson Construction Co., Montclair, c. $4,000	50,000
1884	Stanley Horse Collar Co., Newark, c. $75,000	100,000
1884	Searle M'f'g Co., Newark, c. $2,200	40,000
1884	The Newark Crucible Co., c. $5,000	25,000
1885	The Griffin M'f'g Co., Newark, c. $1,000	250,000
1885	The U. S. Medicine Co., East Orange, c. $5,000	50,000
1885	Holbrook Printing Co., Newark, c. $2,000,	10,000
1885	Hanford, Peckham & McCance Co., Newark, c. $20,000	30,000
1885	The N. J. Gas Saving Co., Newark, c. $1,000	150,000
1885	Newark Beer Cooling and Preserving Co., full paid	30,000
1885	The Glen Ridge Building Association, Bloomfield, c. $1,000	10,000
1885	The Newark Enterprise Brewing Company, Newark, full paid	50,000
1885	The New Jersey District Messenger and Telegraph Alarm Company, Newark, c. $15,000	50,000
1885	The Acme M'f'g Co., Newark, c. $1,000	10,000
1885	The McCowan Co., Newark, c. $30,000	40,000
1885	Crockford Steam Generator Co., Newark, c. $10,000	100,000
1885	The Metallic Match Co., East Orange, c. $4,300	60,000
1885	Listers' Agricultural Chem'cl Works, Newark, full paid	600,000
1886	The Frederick Crane Chemical Co., Newark, c. $20,000	50,000
1886	Belcher Mosaic Glass Company, Newark, c. $1,000	100,000
1886	The Flagler, Forsyth & Pierson M'f'g Co., changed to The Bradley & Pierson M'f'g Co., Newark	
1886	Walton M'f'g Co., Newark, c. $2,000	20,000
1886	The Osborn Paper Box Co., Newark, c. $27,000	30,000
1886	The N. J. Cycling & Athletic Association, Newark, c. $1,000	10,000
1886	Southwest Dressed Beef Co., East Orange,	300,000
1886	Backus M'f'g Co., Newark, c. $1,000	5,000
1886	Morton Brewing Co., Newark, full paid	21,000
1886	Wilkinson, Gaddis & Company, Newark, c. $450,000	500,000

		Capital
1886	Crescent Drug Co., Newark, c. $1,000	100,000
1886	The Cyclist Printing Co., Newark, c. $1,000	5,000
1886	Sargeant M'f'g Co., Newark, c. $2,000	75,000
1886	The Cahoone Barnet M'f'g Co., Newark, paid up	120,000
1886	The N. Y. Equipment Trust Co., Montclair, c. $50,000	100,000
	Combination Roll and Rubber Co., Bloomfield	75,000
	Mallinckrodt Chemical Company, Bloomfield	300,000
	Diamond Mills Paper Company	75,000
	Celluloid Brush Company The	300,000
	Celluloid Manufacturing Company	500,000
	Celluloid Novelty Company	300,000
	Celluloid Showcase Company	125,000
	Central Stamping Company over	1,000,000
	Consumers' Coal Company The	200,000
	The Hall-Chapin Manufacturing Company	750,000
	Newark and Rosendale Cement Company	300,000

GLOUCESTER COUNTY.

1870	Malaga Glass Manufacturing Co	90,000
	Woodbury Glass Works	40,000
	Woodbury Electric Light and Power Co.	30,000
	Standard Window Glass Co	30,000
	John V. Sharp Canning Co	10,000
	Swedesboro Glass Manufacturing Co	7,000
	Responno Chemical Co	300,000

HUDSON COUNTY.

	F. O. Matthiesen & Wiecher's Sugar Refining Co	400,000
	New Jersey Car Spring and Rubber Co	600,000
1873	Central Stock Yard and Transit Co	500,000
	The Jersey City Directory Co	100,000
1866	American Water and Gas Pipe Co	
1863	Hudson City Gas Light Co. (now People's)	
1866	New Jersey Ice Co	
1854	Patent Water & Gas Pipe Co	
1861	Pavonia Ferry Co	250,000
1824	Morris Canal and Banking Co	
1804	Associates of the Jersey Co	100,000
1864	American Dock and Improvement Co	3,000,000
1856	Long Dock Co	800,000
1849	Jersey City Gas Light Co	450,000
1868	People's Gas Light Co. of the City of Hudson	500,000
1862	Central American Transit Co	3,000,000

		Capital.
1832	Fort Lee & N. Y. Steamboat Co.	100,000
	The North Hudson County Ferry Co.	500,000
	Weehawken Ferry Co.	500,000
1850	Jersey City and Bergen Point Plank Road Co.	50,000
	Passaic Zinc Co.	500,000
1875	The Jersey City Wheel Foundry and Machine Works	50,000
1875	The Peq. Land and Building Co.	200,000
1875	Delaware Bridge Co.	50,000
1875	Jersey City United Shutzen Park Co.	50,000
1876	Patent Water and Gas Pipe Co.	100,000
1876	Jersey City Paper Co.	50,000
1877	The Evening Journal Association	21,000
1877	The Communipaw Coal Co.	100,000
1877	The Odorless Excavating Co.	150,000
1877	The Dodge & Bliss Box Co.	20,000
1879	The D. E. Culver Co.	50,000
1879	American Union Telegraph Co.	20,000
1879	Erie & Brooklyn Annex Co.	100,000
1880	B. Mills Co.	80,000
1880	The Clare Fibre Co.	40,000
1880	The Argus Publishing Co.	35,000
	The Wallis Iron Works	20,000
1881	North River Construction Co.	500,000
1881	The Harvey Screw Co.	550,000
1881	A. A. Griffing Manufacturing Co.	150,000
1881	The Pintsch Lighting Co.	500,000
1881	Starin's City, River and Harbor Trans. Co.	100,000
1881	West Side Driving Park Association	5,000
1881	The Hudson Tunnel Construction Co.	2,000,000
1882	Domestic Spring Bed Co.	50,000
1882	Merchants' Lighterage Co.	50,000
1882	Edison Illuminating Co. of N. J.	1,000,000
1882	Standard Oil Co. of N. J.	3,000,000
1882	Pioneer Wood Co.	30,000
1883	Fibrette Manufacturing Co.	20,000
1883	The Bergen Hall Association	10,500
	West Shore and Ontario Terminal Co.	500,000
1883	The Imperator Pulverating Co.	500,000
1884	The Edison Lamp Co.	1,000,000
1884	Hudson Telephone Co.	6,000
1884	The Marshall Ball Co.	21,500
1884	The Amer. Dst. Telegraph Co. of Hoboken.	25,000
1884	The Alpha Rick Co.	20,000
1884	N. Y. & New England Telephone Co.	1,500,000

		Capital
1885	The Lembeck & Hangraves Brewing Co.	50,000
1885	The Lake Hopatcong Land and Improvement Co.	50,000
1879	The Davenport & Treacy Co	50,000
	The Metropolitan Telephone and Telegraph Co. of N. J.	5,000
1883	The Requa Burner Co	50,000

HUNTERDON COUNTY.

Taylor Iron Works	350,000
Lambertville Gas Light Co	30,000
Flemington Gas Light Co	10,000
Centennial Building and Loan Association	250,000
McCreary Bag and Paper Co	150,000
Lambertville Rubber Co	24,000
Westend Iron Company	300,000

MERCER COUNTY.

N. J. State Normal School	18,600
The Trenton Lock Co	60,000
The Mercer Pottery Co	100,000
Trenton Lock and Hardware Co	25,000
John H. Roebling Sons Co	500,000
The Hamilton Rubber Co	60,000
The Trenton Terra Cotta Co	75,000
The Delaware Ice and Coal Co	20,000
The Phœnix Iron Co	10,000
The Dibble Manufacturing Co	35,000
The Willets Manufacturing Co	30,000
The International Pottery Co	20,000
Union Mills Paper Manufacturing Co	25,000
The Ideal Coffee Pot Co. of Trenton	20,000
Trenton China Co	40,000
The Crescent Pottery Co	100,000
The Empire Rubber Co	18,000
Union Library Co	30,000
Trenton Electric Light and Power Co	50,000
The Phœnix Iron Co	125,000
The Jesse Dean Decorating Co	25,000
Trenton Co-operative Co.	5,000
Cook Storage Warehouse Co	25,000
The Olden Land Co. of Trenton, N. J	12,000
James F. Brook Rubber Co	50,000
The Whitehead Brothers Rubber Co	60,000
Trenton Rubber Co	100,000
Workingmen's Co-operative Society	5,000

	Capital.
Co-operative Brick Manufacturing Society	20,000
Knights of Labor Co-operative Hall Association of Trenton	75,000
Home Rubber Co	15,000
The American Crockery Co	50,000
N. J. Steel and Iron Co	1,000,000
East Trenton Porcelain Co	50,000
The Greenwood Pottery Co	200,000
Mercer Pottery Co	200,000
Star Rubber Co	500,000
Trenton Iron Co	2,000,000
Trenton China Co	50,000
Trenton Pottery Co	300,000
Trenton Chain Manufacturing Co	25,000
Trenton Vise and Tool Co	250,000
Trenton Agricultural Works	150,000
Trenton Woolen Co	250,000
Union Pottery Co	250,000
Trenton Fire Brick and Terra Cotta M'f'g Co	200,000
East Trenton Pottery Co	200,000
The Glasgow Pottery Co	200,000
The City Gas Light Co. of Trenton	500,000
The Phœnix Iron Foundry Machine Co	100,000
Hamilton Land Association	500,000
Trenton City Bridge Co	100,000
Trenton Gas Light Co	200,000
President and Directors of Trenton Water Works,	

MIDDLESEX COUNTY.

The New Brunswick Rubber Co	300,000
The Raritan River Clay Co	75,000
The Perth Amboy Terra Cotta Co	125,000
The Middlesex Co	75,000
The A. Hall Terra Cotta Co	74,400
The Salamander Works	100,000
Eastern Development Co	100,000
The George W. Helme Co	500,000
United Refiners Export Oil Co	50,000
The Middlesex Creamery Co	100,000
The Bloomfield Mills Co	100,000
The Kilburn Manufacturing Co	5,000
The Fredonia Publishing Co	15,000
Meyer Rubber Co	200,000
Norfolk & New Brunswick Hosiery Co	550,000
Gas Light Co. of New Brunswick	100,000
Perth Amboy Gas Light Co	65,000

	Capital.
American Fire Proofing Co	12,000
Edison Electric Illuminating Company, of New Brunswick	50,000
Consolidated Fruit Jar Co	500,000
New Jersey Rubber Shoe Company	200,000
Raritan Hollow and Power Brick Co	125,000

MONMOUTH COUNTY.

The Middletown & Shrewsbury Steamboat Co.	13,000
N. Y. & Philadelphia Transportation Co	100,000
The Keyport Gas Co	15,000
Squankum Marl Co	30,000
The Long Branch Gas Light Co	25,000
The Farmers' Transportation Co. of Keyport	100,000
Middletown Transportation Co	25,000
Monmouth Mutual Cranberry Association, of Monmouth County	10,500
The New Jersey Land Improvement Co	500,000
The Maxwell Hat Manufacturing Co	30,000
The Middletown & Port Monmouth Transportation Co	10,080
Sea Bright Fishing Association	2,100
The Freehold & Squankum Marl Co	51,000
Middletown & Port Monmouth Steamboat Co.	25,000
The Bay View Transportation Co	30,000
Cream Ridge Dairy Association	5,000
The Allentown Dairy Association	6,000
The J. D. Rene & Co. Pottery Co	24,000
The Shore Press Publishing Co	5,000
The St. Augustine Construction Co	70,000
Atlantic Highland Steamboat Co	25,000
Gill Carriage & Cab Company	100,000
The New York Coach & Cab Co	5,000
The Monmouth Casino	24,000
The Highland Steamboat Co	75,000
Englishtown Improvement Co	2,000
The Takanesse Lake Improvement Co	75,000
The American Sea Wall Co	25,000
The Long Branch Electric Light Co	50,000
The Sea Side Ice Company	50,000
The Long Branch Sewer Company	100,000
Neptune Street Railway Co	60,000
The Freehold Improvement Co	25,000
Keyport & Middletown Point Steamboat Co	66,000
Keyport Steamboat Co	75,000

MORRIS COUNTY.

	Capital.
Chester Iron Company	500,000
Dickerson, Succasunna Mining Co	500,000
Mount Hope Mining Co	860,000
Morris County Machine & Iron Co	500,000
New Jersey Iron Mining Co	500,000
Weldon Iron Company	200,000
1873 The Dover Printing Co	10,000
The Port Oram M'f'g Co., c. $20,000	32,000
The Port Oram Furnace Co., c. $141,500	141,500
Cooper Iron Mining Co., c. $100,000	100,000
The Dover Iron Company, c. $	200,000
Langdon Mining Co., c. $1,000	9,000
The Dover Lumber Co., c. $50,000, (increased)	50,000
The Singleton Silk M'f'g Co., c. $1,000	60,000
The Mount Olive Iron Co., c. $1,900	51,000
The Butler Hard Rubber Co., c. $300,000	300,000
Bertrands Island Club, c. $19,000	25,000
The Rockaway Direct Process Iron & Steel Co., c. $5,000	75,000
The Hopatcong Canal Co., c. $5,000	10,000
The Schooley's Mountain Granite Co., c. $2,000,	10,000
The Lake Hopatcong Hotel Co., c. $2,000	100,000
Morristown Gas Light Co., actual	40,000
American Forcite Powder M'f'g Co	300,000
Atlantic Dynamite Co	3,000,000

PASSAIC COUNTY.

Barber Flax Spinning Co	750,000
Dolphin Manufacturing Co	300,000
Cooke Locomotive and Machine Co	400,000
Grant Locomotive Works	500,000
The Rogers Locomotive Machine Works	300,000
Phœnix Manufacturing Co	374,000
Paterson Iron Co	100,000
Pompton Steel and Iron Co	500,000
Passaic Rolling Mill Co	200,000
The Rittenhouse Manufacturing Co	200,000
The People's Gas Light Co. of the city of Paterson	500,000
Dundee Chemical Works	60,000
Passaic Gas Light Co	50,000
Paterson & Passaic Horse R. R. Co	30,000
Cedar Lawn Cemetery Co	60,000
Okonite Co	1,000,000
Kearney & Foote Co	150,000

	Capital
NcNab & Harlin Manufacturing Co.	150,000
Passaic Bleaching Co.	100,000
Kilgour Blue Stone Co.	100,000
Artisans' Real Estate and Building Association	15,000
Ashmun Screen Plate Co.	10,000
The Passaic Print Works	100,000
Pioneer Silk Co.	50,000
The Paterson Dyeing and Finishing Co.	8,000
The Mountain View Brick and M'f'g Co.	20,000
The Delaware Contracting Co.	125,000
The Midvale Ore Co.	65,000
F. C. D. McKays Manufacturing Co.	10,000
The N. J. Silk Manufacturing Co.	20,000
The Passaic Printing and Publishing Co.	8,000
The Greenwood Lake Iron Co.	100,000
The Van Riper Land Co.	65,000
Paterson Burglar Alarm and Messenger Co.	10,000
The Dover Silk Manufacturing Co.	40,000
The Weidmann Silk Dyeing Co.	200,000
Olivette Mining Co.	500,000
Layton Iron Co.	15,000
The Barbour Brothers Co.	300,000
The Riverside Soap Co.	10,000
The Beattie Manufacturing Co.	300,000
The Passaic Times Association	10,000
The Paterson Silk Dyeing and Finishing Co.	20,000
Paterson Locomotive Express Co.	6,000
A. & W. S. Carr Co.	75,000
Bakers' and Consumers' Compressed Yeast Co.	25,000
The Paterson Electric Light Co.	50,000
The Dr. Decker Medicine Co.	12,000
The Speer N. J. Wine Co.	200,000
Farragut Hall Association	2,000
The Coggill Iron Co.	100,000
Lary's Express Co.	30,000
The Rotary Steam Snow Shovel M'f'g Co.	300,000
Passaic Woolen Co.	50,000
The N. J. Silk Co.	20,000
The Equitable Land Co.	20,000
The Saddle River Ice Co.	100,000
Kitchell Mining Co.	500,000
The Southern Gold Mining and M'f'g Co.	50,000
The Dundee Publishing Co.	4,000
The James Brick Horse Blindfold Co.	10,000
Unicorn Silk Co.	60,000
The Passaic Electric Light Co.	15,000

	Capital.
The Ivanhoe Paper Co	400,000
Grorge Frost & Sons	100,000
N. J. Chemical and Medical Co.	5,000
Standard Scouring Mill Co	20,000
The Paterson Coal Exchange	20,000
The United Railway Construction and Improvement Co	250,000
The Little Falls Dye Works and Bleacher	100,000
The Mutual Iron Ore Co	48,000
The Dundee Woolen Co.	56,600
The Watson Machine Co	120,000
The Paterson Ribbon Co	30,000
The Eastwood Laundry Machinery Co	15,000

SALEM COUNTY.

Parvin Iron Wagon Co	15,000
Monitor Publishing Co., Woodstown	
Bruna Ice Cream Co., Salem	8,000
Good Fortune Mining Co	300,000
Salem Lecture Hall Co	
Salem Gas Light Co., Salem, paid up	30,000
Fitzhugh M'f'g Co., Centreton, paid up	50,000

SOMERSET COUNTY.

Raritan Woollen Mills	150,000
Somerset Manufacturing Co	150,000
Bound Brook Woolen Mills	75,000

SUSSEX COUNTY.

Musconetcong Iron Works, Stanhope	1,000,000
1860 Newton Gas Light Co	20,775
1860 Newton & Union Gas Light Co	30,000
Brighton Dairymen's Association	11,000
Hamburg Lime Co	50,000
Rubber & Celluloid Harness Trmming Co	100,000
Newton Creamery Association of the County of Sussex	5,000
Stanhope Mining Co	10,000
Big Spring Creamery Association	2,000
H. W. Merriam Shoe Co	200,000
Vernon Lime Company	25,000
Stillwater Creamery Association	2,000
Sussex Shoe Co	60,000
Orange County Stock Farm Co	250,000
Andover Shoe Co.	60,000

UNION COUNTY.

	Capital.
Elizabeth Library Association, $40,000 paid in.	50,000
Joseph Moffat & Co., Westfield, paid up	3,000
The Hainbach Slate Mining Co., Elizabeth	50,000
The Union County Brick Co	30,000
The North Jersey Land Improvement Co., office in New York	500,000
The Mountain Dale Improvement Land and Water Co., Westfield, Springfield and New Providence	650000
The Summit Library Association, Summit	10,000
The Eastern Manufacturing Co., Elizabeth	250,000
The Land & Improvement Co., Linden	100,000
The West Elizabeth Improvement Co., Elizb'th,	250,000
Elizabeth Oil Cloth Co., Elizabeth	80,000
The New Jersey Car Wheel Co	10,000
Elizabethport Acid Works, paid in	28,000
The Babcock & Wilcox Co., Elizabeth	225,000
The Summit Sanitary Co., Summit	2,000
The Harrison Manufacturing Co., Rahway	10,000
Elizabethport Milling Co., additional capital	25,000
Lustral Oil Co., Elizabeth	40,000
The Water Proof Fibre Paint Co	175,000
The Phœnix Rubber Co., Elizabeth	10,000
The Tesla Electric Light & M'f'g Co., Rahway.	300,000
The Eastern Electric Co	250,000
Standard Telephone Co., Plainfield	250,000
The Peter Breidt City Brewery Co., Elizabeth, paid up	25,000
The Puerlo Cabello Constructing Co., Westfield.	10,000
The North American Construction Company, of Puerlo Cabello	500,000
Plainfield Electric Light Co., Plainfield	50,000
The Elizabeth Schuyler Electric Co., Elizabeth.	50,000
Flexible Fence Co., Plainfield, fully paid	250,000
The Frederick Crane Chemical Co., Springfield.	50 000
The Jersey Lily Mining Co., Rahway	100,000
Jackson & Foot M'f'g Co., Elizabeth	250,000
Samuel L. Moore & Sons, Elizabeth, paid up	50,000
The Meneci Telephone Co., Elizabeth, paid up.	25,000
The National Water Works Investment Co., Summit.	500,000
The Acme Exhibition Co., Elizabeth	2,000
The American Weaving Varnish Co. Rahway.	50,000
Live Stock Car Equipment Co., Plainfield	250,000
Argentine Rubber Works, Elizabeth.	20,000

	Capital.
The Rahway & Perth Amboy Telephone Co., Rahway	25,000
Hecla Powder Co., Rahway, paid in	250,0000
Bowker Fertilizer Co., paid in	600,000
New Jersey Extraction Works, authorized cap.,	50,000
Staten Chemical Co., authorized capital	50,000
Elizabethport Manufacturing Co	20,000
Elizabethport Wharf & Coal Co	500,000
Elizabethport Steam Cordage Co	350,000
Lime & Cement Company of Elizabeth	5,000
10 1873 The Singer Manufacturing Co	3,000,000
1869 Union County Brick Co. of Elizabeth	20,000
1855 Elizabethtown Gas Light Co	300,000
1857 Plainfield Gas Light Co	100,000
1853 Rahway Gas Light Co	125,000
1854 Elizabethtown Water Co	114,150
Union Pacific Tea Co	200,000
Fire Proof Building Co	125,000

WARREN COUNTY.

Andover Iron Co	1,000,000
Phillipsburg Stove Works	25,000
Warren Foundry & Machine Co	300,000
The Warren County Gas Light Co	25,000
People's Water Company of Phillipsburg, N. J.,	100,000
Warren Furnace Co	50,000
The American Sheet Iron Co	160,000
The Oxford Iron & Nail Co	1,000,000
The Belvidere Sewer Co	1,500
Marksborough Creamery Association	2,000
Beethoven Piano Organ Co	10,000
The American Brick & Tile Co	100,000
The Phillipsburg Stove Works	50,000
The Screw Mower & Reaper Co	250,000
Standard Silk Co	100,000
Warner Manufacturing Co	140,000
Philadelphia Shoe Manufacturing Co	50,054 14
Warren Slate Co	65,000
	$136,626,199

Exhibit No. 10, for Complainant.

		Capital
	ATLANTIC COUNTY.	
1866, p. 649.	Nescochague Manufacturing Company	$200,000
1854, p. 30.	U. S. Hotel Company	40,000
	BERGEN COUNTY.	
1864, p. 255.	Bergen County Gas Light Company	300,000
1861, p. 295.	Hackensack Gas Light Company	50,000
1859, p. 93.	Boiling Spring Bleaching, Dyeing and Chemical Works	100,000
	BURLINGTON COUNTY.	
1854, p. 37.	Mount Holly Gas Light Company	30,000
	CAMDEN COUNTY.	
1864, p. 17.	Camden Woolen Mills	240,000
1866, p. 595.	Camden Iron Works	300,000
1867, p. 75.	Esterbrook Steel Pen Manufacturing Co.	300,000
1845, p. 103.	The Gloucester Manufacturing Company	100,000
1865, p. 566.	Gloucester Iron Foundry and Machine Co.	500,000
1870, p. 650.	Gloucester Gingham Mills	100,000
1844, p. 55. 1850, p. 9.	Washington Manufacturing Company	600,000
1871, p. 880.	Gloucester Iron Works	300,000
1872, p. 297.	New Jersey Chemical Company	100,000
1873, p. 998.	The River Iron Company	(?) 50,000
1874, p. 1109.	The U. S. Fertilizing and Chemical Co.	200,000
1874, p. 1027.	The Farmers' Market Company	100,000
1875, p. 147.	The River Dock and Warehouse Company	100,000
1875, p. 152.	The Gloucester City Printing and Publishing Company	20,000
1848, p. 55.	Camden Gas Light Company	300,000
1850, p. 139.	Odd Fellows' Hall Association of Camden	30,000
1853, p. 387.	Camden and Atlantic Land Company	100,000
1866, p. 44.	Camden Building & Land Improvement Co.	200,000
1848, p. 62.	Camden & Philadelphia Steamboat Ferry Co.	100,000
1853, p. 241.	Camden and Gloucester City Turnpike Co.	30,000
1866, p. 640.	Camden Horse R. R. Company	50,000
1873, p. 1369.	Gloucester City Gas Light Company	60,000 to 75,000
1871, p. 940.	Ancona Printing Company	125,000 to 200,000
	CAPE MAY COUNTY.	
1871, p. 657.	Somers Point Fish Oil and Guano Company	100,000
1875, p. 14.	Seagrove Association of the Lower Township of the County of Cape May	150,000

CUMBERLAND COUNTY.

		Capital.
1857, p. 403.	Cumberland Nail and Iron Company........	500,000
1870, p. 644.	Cohansey Glass Manufacturing Company....	500,000
1867, p. 32.	Eastlake Woolen Company................	60,000
1865, p. 310.	Millville Manufacturing Company..........	450,000
1871, p. 439.	Millville Glass and Manufacturing Company.	100,000
1857, p. 452.	Millville Gas Light Company.............	40,000
1870, p. 557.	Vineland Gas Light Company..............	50,000

ESSEX COUNTY.

1870, p. 855.	Baxter Steam Boiler and Engine Mfg. Co...	250,000
1866, p. 106.	Clark Thread Company...................	1,500,000
1865, p. 271.	Gould Machine Company..................	150,000
1836, p. 295.	The N. J. Manufacturing Co. of Newark...	100,000
1840, p. 41.	The Newark Lime and Cement Company...	400,000
1870, p. 424.	Newark Chemical Works..................	250,000
1871, p. 934.	Montclair Gas and Water Company.........	115,000
1873, p. 1027.	The Passaic Chemical Company............	500,000
1873, p. 1023.	Essex Ice Company......................	250,000
1874, p. 979.	Hewes & Phillips Iron Works.............	500,000
1874, p. 926.	T. P. Howell & Co......................	300,000
1868, p. 398. 1869, p. 953.	Citizens' Gas Light Co. of Newark.........	1,000,000
1845, p. 168. 1854, p. 41. 1859, p. 256.	Newark Gas Light Company...............	1,000,000
1865, p. 936.	Orange Water Company..................	400,000
1866, p. 305. 1873, p. 994.	Newark City Ice Company................	200,000
1849, p. 55. 1852, p. 26. 1869, p. 285.	The N. J. Zinc & Iron Company...........	3,040,000

GLOUCESTER COUNTY.

1873, p. 911.	Malaga Glass Manufacturing Company......	90,000

HUDSON COUNTY.

1867, p. 354. 1870, p. 113.	F. C. Matthiesen & Wiecher's Sugar Refining Company.........................	400,000
1868, p. 803. 1873, p. 920.	Central Stock Yard and Transit Company...	500,000
1874, p. 858.	The Jersey City Directory Company........	100,000
1804, p. 367.	Associates of the Jersey Company..........	100,000
1864, p. 683.	American Dock and Improvement Company.	3,000,000
1856, p. 67. 1858, p. 204.	Long Dock Company.....................	800,000
1849, p. 279. 1866, p. 896.	People's Gas Light Co., of the city of Hudson	500,000
1862, p. 328. 1867, p. 787.	Central American Transit Company........	3,000,000
1832, p. 170.	Fort Lee and New York Steamboat Co......	100,000
1870, p. 1041.	The North Hudson County Ferry Co.......	500,000

		Capital.
1849, p. 189. 1854, p. 44.	The Pávonia Ferry Company	250,000
1852, p. 401. 1859, p. 3.	Weehawken Ferry Company	500,000
1850, p. 255. 1868, p. 294.	Jersey City and Bergen Point Plank Road Co.	50,000
1848, p. 180. 1852, p. 406. 1857, p. 300.	Passaic Zinc Company	500,000

HUNTERDON COUNTY.

1868, p. 1116.	Taylor Iron Works	350,000
1857, p. 309.	Lambertville Gas Light Company	30,000
1859, p. 373.	Flemington Gas Light Company	10,000

MERCER COUNTY.

1867, p. 487.	The American Crockery Company	50,000
1861, p. 477.	N. J. Steel and Iron Company	1,000,000
1864, p. 61.	East Trenton Porcelain Company	50,000
1868, p. 238.	The Greenwood Pottery Company	200,000
1866, p. 803.	Mercer Pottery Company	200,000
1869, p. 28.	Star Rubber Company	500,000
1847, p. 61. 1854, p. 61.	Trenton Iron Company	2,000,000
1859, p. 179.	Trenton China Company	50,000
1865, p. 17.	Trenton Pottery Company	300,000
1865, p. 447.	Trenton China Manufacturing Company	25,000
1868, p. 241.	Trenton Vise and Tool Company	250,000
1869, p. 278.	Trenton Agricultural Works	150,000
1869, p. 1027.	Trenton Woolen Company	250,000
1869, p. 875.	Union Pottery Company	250,000
1871, p. 345.	Trenton Fire Brick and Terra Cotta Manufacturing Company	200,000
1873, p. 1331.	East Trenton Pottery Company	200,000
1873, p. 1221.	The Glasgow Pottery Company	200,000
1874, p. 911.	The City Gas Light Company of Trenton	500,000
1874, p. 973.	The Phœnix Iron Foundry Machine Co.	100,000
1842, p. 119. 1861, p. 6.	Trenton City Bridge Company	100,000
1847, p. 71.	Trenton Gas Light Company	200,000
1804, p. 326.	President and Directors of Trenton Water Works	

MIDDLESEX COUNTY.

1861, p.	Meyer Rubber Company	200,000
1863, p.	Norfolk and New Brunswick Hosiery Co.	550,000
1851, p. 460.	Gas Light Company of New Brunswick	100,000
1865, p. 229.	Perth Amboy Gas Light Company	65,000

MONMOUTH COUNTY.

1852, p. 324. 1864, p. 467.	Keyport and Middletown Point Steamboat Co.	66,000

Morris County.

		Capital.
1869, p. 1145.	Chester Iron Company	500,000
1854, p. 118.	Dickerson Succasunna Mining Company	500,000
1831, p. 28. 1856, p. 7.	Mount Hope Mining Company	860,000
1870, p. 364.	Morris County Machine and Iron Company	500,000
1867, p. 149.	Weldon Iron Company	200,000
1873, p. 1515.	The Dover Printing Company	10,000
1867, p. 264.	The Dover Iron Company	200,000
1855, p. 74.	Morristown Gas Light Company	40,000

Passaic County.

1866, p. 65.	Barbour Flax Spinning Company	750,000
1851, p. 89.	Dolphin Manufacturing Company	300,000
1857, p. 3.	Cooke Locomotive and Machine Company	400,000
1867, p. 929.	Grant Locomotive Works	500,000
1856, p. 9.	The Rogers Locomotive Machine Works	300,000
1824, p. 8. 1868, p. 476.	Phœnix Manufacturing Company	374,000
1853, p. 33.	Paterson Iron Company	100,000
1866, p. 25.	Pompton Steel and Iron Company	500,000
1869, p. 34.	Passaic Rolling Mill Company	200,000
1872, p. 420.	The Rittenhouse Manufacturing Company	200,000
1874, p. 1191.	The People's Gas Light Company of the City of Paterson	500,000
1869, p. 359.	VanRiper Manufacturing Company	62,000
1857, p. 351.	Passaic Gas Light Company	50,000
1868, p. 198.	Paterson and Passaic Horse R. R. Company	30,000
1872, p. 204.	Dundee Water Power and Land Co.	100,000 to 500,000

Somerset County.

1869, p. 536.	Raritan Woolen Mills	150,000
1837, p. 265.	Somerset Manufacturing Company	150,000

Sussex County.

1865, p. 40.	Musconetcong Iron Works	1,000,000
1865, p. 486. 1870, p. 672.	Newton Gas Light Company	20,775
1860, p. 620.	Newton and Union Gas Light Company	30,000
1875, p. 1071.	Rubber and Celluloid Harness Trimming Co.	100,000
1871, p. 484.	Franklin Iron Company	200,000 to 300,000

Union County.

1836, p. 355.	Elizabethport Manufacturing Company	20,000
1867, p. 948.	Elizabethport Wharf and Coal Company	500,000
1869, p. 1276.	Elizabethport Steam Cordage Company	350,000
1855, p. 114.	Lime and Cement Company of Elizabeth	5,000
1873, p. 971.	The Singer Manufacturing Company	3,000,000
1869.	Union County Brick Company of Elizabeth	
1855, p. 105.	Elizabethtown Gas Light Company	300,000

		Capital.
1857, p. 185.	Plainfield Gas Light Company	100,000
1853, p. 131.	Rahway Gas Light Company	125,000
1854, p. 203.	Elizabethtown Water Company	114,150
	WARREN COUNTY.	
1868, p. 154.	Andover Iron Company	1,000,000
1870, p. 296.	Phillipsburg Stove Works	25,000
1856, p. 99. 1874, p. 1071.	Warren Foundry and Machine Company	300,000
1875, p. 174.	The Warren Gas Light Company	25,000
1859, p. 377. 1865, p. 401.	The Oxford Iron and Nail Company	1,000,000
1873, p. 1041.	Warren Manufacturing Company	400,000
	Total	$51,846,925

111 UNITED STATES OF AMERICA,
District of New Jersey, } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a true copy of all the proceedings in the suit of The National Newark Banking Company against The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver of taxes, as the same remains on file and of record in my office at Trenton, in said district.

In testimony whereof I hereto set my hand and affix the seal of said court at Trenton, in said district, this twenty-fourth day of November, A. D. 1886.

[The Seal of the U. S. Circuit Court, Dist of New Jersey.]

S. D. OLIPHANT, *Clerk.*

Endorsed on cover: New Jersey C. C. U. S. No. 1301. The National Newark Banking Company, appellant, *vs.* The Mayor and Common Council of the City of Newark and A. Judson Clark, receiver of taxes. Filed November 29, 1886.

121-163

Supreme Court of the United States.

October Term, 1886.
No. 1301.

THE NATIONAL NEWARK BANKING COMPANY,
Appellant,
vs.
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, et al.,
Appellees.

On Appeal from the Circuit Court of the U. S. for the District of New Jersey.

BRIEF FOR APPELLANT.

CHARLES W. WELLS,
JOHN W. TAYLOR,
Counsel for Appellant.

NEWARK, N. J.:
WARD & TICHENOR, LAW CASE PRINTERS, 832 & 834 BROAD STREET.
1887.

Ward & Tichenor, Law Case Printers, 832 and 834 Broad St., Newark, N. J.

Supreme Court of the United States.

October Term, 1886. No. 1301.

THE NATIONAL NEWARK BANKING COMPANY,
Appellant,
and
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, AND A. JUDSON CLARK, RECEIVER OF TAXES,
Appellees.

On Appeal from the Circuit Court of the U. S. for the District of New Jersey

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Statement of the Case.

The appellant filed its bill in the Court below (*Record*, p. 3,) to enjoin the collection by the defendants of taxes assessed on the shares of its capital stock, in violation (as alleged) of the condition on which the permission to assess such shares was granted by Section 5219 of the Revised Statutes of the United States; because, while, by the laws of New Jersey, shares of stock in National Banks are taxed at their full actual value, a very material part relatively of "other moneyed capital" in the hands of individual citizens—including shares of stock in all other corporations of the State, (except State banks,) deposits in savings institutions, and bonds and certificates of indebtedness of railroad and canal companies—are entirely exempt from taxation.

The answer (*Record*, p. 13,) admits that deposits in savings institutions, and shares of corporations (other than banks), are exempt from taxation in the hands of the individual owners thereof, but it insists, (1) that the taxation of the property or capital stock of those institutions and corporations in their hands, is tantamount to the taxation of such deposits and shares in the hands of the individual owners thereof, and is a virtual compliance with the condition in Section 5219; and (2) that "the moneyed capital" so exempt from taxation in the hands of individual citizens, does not constitute a material portion of the "moneyed capital" of the State.

A preliminary injunction was granted after argument, but when the cause came on for final hearing, and it appeared in the opening of the case by counsel, that the questions raised by the bill were embraced in and covered by the case of *The Mercantile National Bank* vs. *The Mayor, Alderman and Commonalty of the City of New York*, which arose in the Southern District of New York, and was decided by Circuit Judge WALLACE, the Court below, (BUTLER, *D. J.*,) announced that it would, for the sake of "uniformity of decision and certainty in the law," follow that decision, and it accordingly, without hearing argument, dissolved the injunction and dismissed the bill. (*Record*, p. 20.)

The appellant is a National Bank created under the National Bank act (p. 2), and is located in the city of Newark. The city of Newark, by its officers, made an assessment in August, 1885, against each individual shareholder of the bank, residing in said city, and outside of the State of New Jersey, for the gross value of the shares held by each shareholder, of $65 per share, being of a par value of $50, without making any deduction for the bonds of the United States held by the bank, being of a par value of $500,000. (*Record*, p. 3.)

(See the statutory provisions of the State, in relation to the taxation of bank shares, *Appendix I.*)

This case is not based upon any failure by the assessing officer to comply with the requirements of the law, but involves the right of the State of New Jersey to tax the shares of National Banks located therein, under the law and the facts as they now exist in that State. It arises under Section 5219 of the Revised Statutes of the United States, which enacts as follows:

> " Nothing herein shall prevent all the shares in any
> " association *from being included in the valuation of the*
> " *personal property of the owner or holder of such share*, in
> " assessing taxes imposed by authority of the State within
> " which the association is located ; but the legislature of
> " each State may determine and direct the manner and
> " place of taxing all the shares of National banking as-
> " sociations located within the State, *subject only to the two*
> " *restrictions, that the taxation shall not be at a greater rate*
> " *than is assessed on other moneyed capital in the hands of*
> " *individual citizens of such State*, and that the shares of
> " any National banking association owned by non-resi-
> " dents of any State, shall be taxed in the city or town
> " where the bank is located and not elsewhere."

The theory of the appellant is, that the State of New Jersey has not complied with the condition imposed by Congress, and has not, therefore, acquired the right to tax the shares of National Banks, for the reason that it has imposed a greater rate of taxes upon such shares than upon "other moneyed capital in the hands of individual citizens of such State," by the exemption from all taxation in the hands of individual citizens of the several species of moneyed capital, above mentioned, aggregating in actual value the sum of $526,746,051, whilst it has, by the statutory provisions already mentioned, authorized the taxation of National Bank shares at their full actual value, amounting at par to $12.103,350, (*Record*, pp. 26 and 78½.) Under the authority of *Boyer* vs. *Boyer*, (113 U. S., 689.) we claim this exemption to be of a very material part relatively of the whole body of moneyed capital, and to render such taxation of National Banks void.

These exemptions are of three classes, as follows:

(*A.*) *Shares of stock in corporations (other than banks.)* By the statutes of New Jersey, the persons holding the shares of stock of corporations (other than banks) of the State shall not be assessed therefor. (For the statutory provisions in full, see *Appendix II.*)

The evidence shows these shares to be as follows:

1. The shares of Railroad and Canal Companies of the State of New Jersey, (*Rec.*, pp. 65 to 68 inclusive)........	$119,794,468
2. Shares of the capital stock of Insurance Companies, other than Life, (*Rec.*, p. 70)...........................	2,605,970
3. Shares of the capital stock of Life Insurance Companies, (*Rec.*, p. 72)....	115,000
4. Shares of the capital stock of Mining and Manufacturing Companies, (*Rec.*, p. 30, and Ex., p. 79, &c.)..........	136,626,199
5. Shares of the capital stock of corporations of the State of New Jersey, other than those above mentioned, (*Rec.*, p. 25, and Ex., p. 43, &c.)....	119,305,339
	$378,446,976

(*B.*) *Deposits in Savings Institutions.*

By the same statute which exempts corporate shares from taxation, *depositors in savings banks are exempted from taxation on their personal estate to the amount of their deposits.*

(See *Appendix II.* § *1.*)

It appears by the evidence, (*Record*, p. 75,) that the aggregate amount of the deposits thus exempted, is *$24,017,916.*

(*C.*) *Bonds and certificates of indebtedness of railroad and canal corporations.*

By Section 1 of an act approved April 10, 1884, (see *Appendix III*,) the legislature of New Jersey exempted from taxation, in the hands of holders thereof, the *bonds and certificates of indebtedness* of railroads and canal companies, subject to the provisions of that act.

The evidence, (*Record*, pp. 2 and 65–68,) shows the aggregate *bonded* indebtedness of those companies to be $124,281,259.

Adding the amounts exempted under these three classes, it appears that the grand total of moneyed capital exempt from taxation, in the hands of individual citizens, is **$526,746,051.**

The questions raised by the pleadings are as follows:

1. Are the shares of State corporations, (other than banks,) moneyed capital, within the meaning of the act of Congress?

2. If such shares are moneyed capital, then is the taxation of the "capital stock and accumulated surplus," or of the real and personal property of corporations, in their hands, under the acts of 1866, 1878 and 1879, a compliance with the condition contained in Section 5219, above quoted?

3. Does the amount of "moneyed capital" exempt from taxation in the hands of individual citizens constitute a material portion relatively of the "other moneyed capital" of the State?

[The provisions of the acts of 1866, 1878 and 1879 will be found in *Appendix II*.]

The appellant contended that such shares are moneyed capital; that the taxation of the capital stock and accumulated surplus, or property, of corporations in their hands, is not a compliance with the condition contained in Section 5219; that such taxation of the capital stock and accumulated surplus, or property of corporations, in their hands, is not equivalent to taxation of the shares thereof, or of deposits therein, in the hands of individual citizens; and that the amount so exempt constituted a material portion of the "other moneyed capital."

The appellees took an opposite view.

ASSIGNMENTS OF ERROR.

1. The Court below erred in dissolving the preliminary injunction and dismissing the bill.

2. The Court below erred in not holding that the shares of the appellant were taxed, under the laws of New Jersey, "at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of said State."

3. The Court below erred in not holding that shares of stock of corporations other than banks, in the hands of individual holders thereof, are "moneyed capital," within the meaning of Section 5219.

4. The Court below erred in not holding that the taxation of the capital stock or property of corporations, in their hands, was not tantamount or equivalent to the taxation of the shares of, or deposits in, such corporations, in the hands of individual citizens, and did not amount to a compliance with the requirement of Section 5219.

5. The Court below erred in not holding that the amount of moneyed capital exempt from taxation under the laws of New Jersey, constituted a material portion of the moneyed capital of the State.

Brief of Argument.

[In view of the fact that a full argument has been presented in the brief of the appellant in a case argued with this case (*Mercantile National Bank* vs. *The Mayor, etc., of New York*, No. 1258, October Term, 1886,) upon many questions involved in this case, so far as they are identical, a brief statement only will be herein presented.]

POINT ONE.

The words "other moneyed capital in the hands of individual citizens," are not confined in their meaning to capital employed in the business of banking, but embrace shares of stock of all corporations, whether they are engaged in manufacturing, railroad or banking business, and also embrace bonds, mortgages, credits and money at interest.

It is manifest that Congress did not in the act of 1864 (13 Stat. 111,) intend that nothing but *banking* capital should be embraced in the words "other moneyed capital," from the fact that it proceeded to add another condition for the express purpose of covering State bank shares, to wit:

"That the tax so imposed under the laws of any "State, upon the shares of any association authorized "by this act, shall not exceed the rate imposed upon "the shares in any of the banks organized under the "authority of the State where such bank is located."

This was omitted in the act of 1868.

The cases in the courts are as follows:

Hepburn vs. *School Directors*, 23 Wallace, 480;

(Holding that money at interest is not the only moneyed capital, and that *other investments in stocks and securities* may be included in that descriptive term.)

Adams vs. *Nashville*, 95 U. S. 539;

(Holding that *interest paying bonds* of the State are moneyed capital.)

People vs. *Weaver*, 100 U. S. 539;

(The discrimination here complained of was against National Bank shares *and* State Bank shares, in favor of other species of moneyed capital, and was held to be a violation of the National Banking act:)

Cummings vs. *The Bank*, 101 U. S. 143;

(Holding to the same effect.)

Evansville Bank vs. *Britton*, 105 U. S. 322;

(Holding that credits, money loaned at interest and demands against persons or corporations, are moneyed capital.)

Boyer vs. *Boyer*, 113 U. S. 689;

(Holding corporate bonds, mortgages and judgments, to be moneyed capital.)

The chief question in this last case was, whether "other moneyed capital" referred to capital invested in banking business. The Supreme Court of Pennsylvania held that it did. This Court held that it did not, but that it covered "all other moneyed capital however invested, whether in State bank shares *or otherwise*."

These cases are all against the theory that money invested or employed in banking business is the only "moneyed capital."

The following cases seem to sustain that theory, however:

Bank of Utica vs. *Waters*, 7 Fed. Rep. 156. (WALLACE, *Judge*.)
Stratton vs. *Collins*, 43 N. J. Law, 569.
McMahon vs. *Palmer*, 102 N. Y. 176.

These cases were decided without reference to any of the foregoing cases in the Supreme Court.

As the learned Judge of the Court below filed no opinion, but simply adopted that of Judge WALLACE in the case of the *Mercantile National Bank* vs. *City of New York*, (28 Fed. Rep. 776,) we are obliged to refer to the opinion in that case for the basis of the judgment of the Court below.

Judge WALLACE assumed to base his opinion, which was adverse to the claims of the stockholders, upon the case of *Boyer* vs. *Boyer*. He did so upon an evident misapprehension of that case. He says, (p. 786 Fed. Rep.):

"The capital which was exempt from local taxation "under the laws of Pennsylvania, and which the Court "held in *Boyer* vs. *Boyer* to be a material portion of the "moneyed capital of individual taxpayers, was *almost* "*wholly* of this kind, being mortgages, judgments, bonds, "certificates of indebtedness, and moneys owing upon "articles of agreement."

And again:

"It is true that shares of stock of all corporations of "the State liable to pay a State tax were also exempt in "that case, but no *emphasis* was placed, in the opinion of "the Court, upon the exemption of this kind of capital, "and, of course, this exemption included shares of stock "in moneyed corporations, as well as in other corporations."

Three misapprehensions are here manifest:

1st. The kind of "moneyed capital," of which he speaks, instead of being "almost the whole," was less than one-fifth of the whole, while shares of stock in miscellaneous corporations, not including banks, constituted the other four-fifths.

2d. This Court placed *great emphasis* upon the exemption of the shares of stock in miscellaneous corporations.

3d. Shares of stock of State banks were not included in the exempted shares. They were expressly made taxable by the State laws.

It is difficult to understand why shares of miscellaneous corporations are not "moneyed capital," if shares of banks are "moneyed capital," as they are declared to be by the act of Congress itself, and are admitted by Judge WALLACE to be.

The only difference between the two, lies in the character of the property owned by the corporation, not in the character of the shares themselves; and to hold, therefore, that the one is "moneyed capital" and the other is not, is to confound *shares* of a corporation with the *property* of a corporation; or, in other words, to hold that the interest of a shareholder is an interest in the property of a corporation itself, the contrary of which has been so frequently declared by this Court.

Van Allen vs. *Assessors*, 3 Wallace, 573.
Farrington vs. *Tennessee*, 95 U. S. 679.
New Orleans vs. *Houston*, 119 U. S. 265.

And also by the courts of New Jersey:

Stratton vs. *Collins*, 14 Vroom, 562.

The purpose of Congress in establishing this restriction upon the power of the States to tax shares of National Banks, was for the protection of this new instrumentality of the Federal Government, and such protection was designed to be coextensive with the danger. It is obvious that a discrimination in taxation in favor of investments in shares of railroad or manufacturing companies, against investments in National Bank shares, is quite as injurious and destructive to the existence, usefulness, and success of the National Banking system, as an exemption in favor of State Bank shares. It is quite clear, therefore, that shares of manufacturing or railroad companies are as much within the intent of the act of Congress as is banking capital, if, in any sense, a share of a corporation is "moneyed capital."

We have already shown that Congress itself, in the use of the expression, "*other* moneyed capital," virtually declared that shares of bank stock *are* "moneyed capital."

POINT TWO.

Shares of stock of railroad, manufacturing, telegraph, and other business corporations of the State of New Jersey being "other moneyed capital," within the meaning of the act of Congress, that State has exempted such moneyed capital from taxation; and the shares so exempted constitute a "very material" part, relatively, of "other moneyed capital," and the exemption thereof renders void the taxation of National Bank shares.

Section 15 of the act of 1886, (*Appendix II.*, § 1,) provides that the *persons holding the shares of the capital stock of all private corporations* in the State, (excepting banking institutions, and those which by their charter are expressly exempted from taxation, and excepting mutual life insurance companies, specially taxed,) *shall not be assessed therefor.*

Section 1 of an act for the taxation of railroad and canal property, approved April 10, 1884, (*Appendix III.*,) provides that the "shares of stock, &c., shall not be taxed in the hands of the shareholders" of railroad and canal companies operating railroads within the State.

The tax imposed by the acts of 1866, 1878 and 1879, (*Appendix II.*, §§ 1, 2 and 3,) is only upon the *capital stock* or *property* of a corporation, from which is to be deducted all non taxable property, such as State and United States bonds, shares of stock in other corporations, property actually out of the State, and the like, and without any regard to the market value of the shares, evidently not including the corporate franchise.

Corporations of New Jersey are entitled to have deducted from the amount of their capital stock paid in and accumulated surplus, the amount of the bonds of that State, and the stock and public securities issued by the United States, owned by them at the time of assessment.

Newark City Bank vs. *Assessor*, 1 Vr. 13;
State vs. *Metz*, 3 Vr. 199;
State vs *Parker*, 5 Vr. 479;
S. C., 6 Vr. 575;
State vs. *Haight*, 6 Vr. 279;
See *Stewart's Dig.* TAXES, § 164.

Nothing can be added. It is perfectly manifest that *shares of stock* (*i. e.*, "moneyed capital in the hands of the individual holders thereof,") are not taxable by the laws of New Jersey, excepting the shares of National Banks and State Banks.

This species of moneyed capital embraces the great bulk of the "other moneyed capital" of the State, and amounts to $378,446,976. "*Statement of Facts*," (Class A.)

POINT THREE.

Bonds and certificates of indebtedness of railroad and canal companies, and deposits in savings banks, in the hands of the holders thereof, are exempt, under the statutes of the State, from taxation, the same being "a very material" amount. Such bonds and certificates of indebtedness and deposits being a "very material" amount, this exemption constitutes a discrimination against National Bank stock.

1. *Bonds and certificates of indebtedness.*

Section 1, of the act of April 10th, 1884, provides that "the bonds and certificates of indebtedness of such companies, shall not be taxed in the hands of the * * * bondholders or creditors, except as hereinafter provided." (See *Appendix III.*)

There is no provision in the statute for the specific taxation of such bonds and certificates; the only provision is for the taxation of the property of a corporation, tangible or intangible.

The same report of the State Board of Assessors, to which reference has heretofore been made, and which was put in evidence by the appellant, (pp. 25 and 65 to 68 inclusive,) shows the aggregate bonded indebtedness of such corporations to be $124 281,159.

No question can possibly exist of the fact that the bonds and certificates of indebtedness are "other moneyed capital in the hands of the individual citizen," within the meaning of the act of Congress.

2. *Deposits in savings banks.*

Section 15, of the act of 1866, (*Appendix II.* § *1.*) provides that "depositors in savings banks taxed by virtue of that section *shall be exempted from taxation* on their personal estate *to the amount of their deposits.*"

The aggregate amount of these deposits in the State is $24,017,916. (*Record*, pp. 26 and 75.)

These deposits are unquestionably "moneyed capital."

This Court, in *Evansville* vs. *Britton*, 105 U. S., 322, declared that "*credits, money loaned at interest, and demands against persons or corporations, are moneyed capital.*"

These two species of "moneyed capital" alone, amount to....................	$148,299,075
Adding thereto the aggregate of the other species (corporate shares,) stated under "*Point Two*," viz:....................	378,446,976
There is a *Grand Total* of...............	$526,746,051

POINT FOUR.

That if the amount of exempt moneyed capital is as great, or one-half as great, as above stated, it is hardly necessary to say that it constitutes a material portion of the moneyed capital of the State, and that it is as great, or nearly as great as stated, appears by the evidence.

1. By the report of the Comptroller of the Treasury, for the year 1885, (see *Record*, p. 78, Exhibit 6,) the total value of all the taxable personal property in the State,

(including taxable moneyed capital, and excluding debts deducted,) appears to be	$118,790,980
Adding the indebtedness deducted, (in round numbers)	51,000,000
The total value of all taxable personal property in the State amounts to	$169,790,980
Deducting the value of National Bank stock included therein	12,103,350
The "other moneyed capital" and all other personal property that is *taxable*, amounts only to	$157,687,630

A large part of this sum, doubtless, represents taxable personal property *which is not moneyed capital*, but which consists of tangible property, such as goods and chattels.

The taxable "other moneyed capital" amounts to less than	$157,687,630
The exempt "other moneyed capital" amounts to	526,746,051
Making the total moneyed capital, taxed and exempt	$604,433,681

The question resolves itself into this, viz., is $\frac{526}{684}$, or a little less than $\frac{5}{6}$ of the whole, *a material portion of the whole?*

2. THE EVIDENCE as to the amount exempted, is derived mainly from financial public documents, prepared and published under the authority of the State of New Jersey, and containing facts and statistics ascertained and compiled by officers appointed for the purpose, and in pursuance of the requirements of law. (See *Appendix IV. for these legal provisions.*)

They are largely derived from the report of the State Board of Assessors, which is a body appointed by the Governor, and constituted by the act above cited for the taxation of railroad and canal property, approved April 10, 1884. (*Appendix IV.*, § *3.*)

It is the duty of that board to ascertain the true value of all real and personal property used for railroad or canal purposes within the State, including the franchises of such companies. And it is also the duty of said board to ascertain the amount of the capital stock and bonded indebtedness of each railroad and canal company. These facts were so ascertained for the purpose of determining the value of the property for the purposes of State and local taxation. The statute requires this board to keep a record of its proceedings, and to report annually to the legislature the facts thus ascertained and determined.

It is this report which the appellant offered in evidence, (*Record*, p. 25,) and which shows (pp. 63–68) the aggregate amount of the capital stock of the railroad companies to be $119,794,468.

This, it will be observed, upon reference to the table itself on pages 65 to 68, included, as to railroads whose lines extended into other States, only so much of the capital stock of such companies as was apportioned to the mileage in New Jersey, and did not embrace the capital stock of railroad corporations of other States, operated under lease of railroads in New Jersey.

From the same authority (*Record*, pp. 25 and 43 to 62,) is obtained the aggregate capital stock of corporations of the State of New Jersey, *not* railroad or canal companies, and *not* manufacturing or mining companies. That aggregate is stated to be therein, $119,305,339.

By another statute of 1884, the same board was required to impose a tax of one-tenth of one percentum upon the capital stock of all such corporations, (not railroad or canal, manufacturing or mining,) and from the reports of the various companies liable to such taxation, they have ascertained and determined the facts set forth in said report. (*Appendix IV.*, § 4.)

The Secretary of State of New Jersey as a Commissioner of Insurance, is obliged by law to ascertain, among other things, the capital stock of all insurance companies and report the same annually. That report (*Record*, pp. 25, 69 and 70,) shows the capital stock of insurance companies other than life to be $2,605,970, and on pages 71 and 72, the capital stock of a life insurance company of New Jersey, to wit, the Prudential of Newark, to be $115,000. This official evidence covers the bulk of the case offered by the complainant. It is manifest, however, that there is another large list of corporations not embraced within the liability to taxation under the act of 1884. That is to say, manufacturing or mining corporations. (See *Appendix IV.*, § 2.)

To ascertain the aggregate amount of the capital stock of such companies and put in evidence the strict legal form of proof thereof, was found to be a practical impossibility. It was soon discovered that the number of such corporations would run into the thousands, and to put into evidence certified copies of the articles of association or charters of all such companies, would make a record of enormous proportions. A thoroughly competent person, Peter T. Wood, (*Record*, p. 30,) was employed to make up from the records of corporations contained in the clerks' offices of the leading counties of the State, a list of all such corporations, "the names of such companies; the amount of capital authorized; and the amount paid up under the various general laws of the State."

He swears that he figured up the total amount of capital stock in these corporations to be $1,358,143,926.

By the laws of the State all corporations incorporated under the general laws of the State, are obliged to record in the clerk's office of the county wherein they propose to do business, certificates showing the facts above stated. It was feared, however, as will appear from the testimony of Wood and Jenkins (p. 33), that this list included a large number of corporations that had possibly gone out of business, and therefore the most careful and searching efforts were made by the two witnesses to discover which (if any) of these corporations had so gone out of business.

It was physically impossible to summon witnesses having actual knowledge of the financial status of the thousands of corporations upon this list. Therefore, upon the information thus acquired, the complainant eliminated from the list, prepared by the witness Wood, all such corporations of which any substantial information showing them to be inactive, had been received. The remainder constitutes the lists finally put in evidence, commencing on page 79 of the *Record*, and showing an aggregate capital stock of $136,626,199.

It, of course, will be understood by the Court that the evidence upon which the complainant stands is not that of hearsay evidence conveyed to the witnesses Wood and Jenkins, by the numerous persons consulted by them, but that it stands upon the records made by the corporations themselves, under the statutes of the State, in the offices of the county clerks of the several counties of the State.

This is one of the exceptional cases, "*where* the evidence *is the result of voluminous facts, or of the inspection of many books and papers, the examination of which could not conveniently take place in Court*," in which cases the rule is relaxed.

See *1 Greenl. Ev.*, § 93.
1 Wharton Ev., § 80.
Stephens' Ev., (by Chase.) Art. 71, (b.)
Burton vs. *Driggs*, 20 Wall. 125.

3. *The documentary evidence offered to establish the foregoing facts, is competent.*

(1.) The documents were prepared and printed by legislative authority.

(*a*.) The report of the *Comptroller of the Currency*, showing the capital, &c., of the National and State banks, was prepared and printed pursuant to Section 333 of the Revised Statutes of the U. S., (see also Section 3801.)

(*b*.) The *Report of the State Board of Assessors*, showing the paid-up capital stock and bonded debts of the railroad and canal companies of the State, was prepared and printed pursuant to the Session Laws of 1884, Chap. 51, p 142. (See *Appendix IV.*, § 4)

(*c.*) The *Report of the State Board of Assessors*, showing the capital stock of other corporations, (not including banks and insurance companies,) was prepared and printed pursuant to the Session Laws of 1884, Chap. 159, p. 232. (See *Appendix IV.*, § 3 and 4.)

(*d.*) The *Report of the Secretary of State* of New Jersey, showing the capital stock of insurance companies and savings banks, was prepared and printed pursuant to *N. J. Revision* (1877), p. 516, pl. 51, and p. 1066, pl. 42. (See *Appendix IV.*, §§ 1 and 2.)

(*e.*) The *Report of the N. J. Comptroller of the Treasury*, showing the valuation of ratables, was prepared and printed pursuant to *N. J. Revision* (1877), p. 1218, pl. 35. (See *Appendix IV.*, § 5.)

(*f.*) The special provisions for printing of the documents, are found in *N. J. Revision* (1877), p. 1127, and in the Session Laws of 1883, Chap. 183, p. 210.

(2.) (*a.*) The volumes of State papers published under the authority of an act of Congress, and containing the authentication required by the act, are legal evidence.

Watkins vs. *Holman*, 16 Pet. 25;
Bryan vs. *Forsyth*, 19 How. 334;
Gregg vs. *Forsyth*, 24 Id. 179.

In the United States, in all public matters, the journals of Congress and of the State legislatures are evidence, *and also the reports which have been sanctioned and published by authority.*

Watkins vs. *Holman*, 16 Pet. 25.
(See *Abb. Nat. Dig.*, Ev., § 111.)

(*b.*) "Where the particular facts are inquired into and recorded for the benefit of the public, those who are empowered to act in making such investigations and memorials, *are in fact the agents of all the individuals who compose the State; and every member of the community may be supposed to be privy to the investigation.*

"On the ground, therefore, of the credit due to agents so empowered, and of the public nature of the facts themselves, *such documents are entitled to an extraordinary degree of confidence; and it is not necessary that they should be sanctioned by the ordinary tests of truth.* Besides this, it would always be difficult, and often impossible, to prove facts of a public nature, by means of actual witnesses upon oath."

1 Greenl. Ev. (14th Ed.) § 483.
See *Id.* §§ 479–484.
1 Wharton Ev. §§ 638–640.
Stephens' Dig. (Chase's Ed.) p. 143, Art. 76.

(3.) Besides, the evidence in question is "*the best evidence of which the case in its nature is susceptible.*" (*1 Greenl. Ev.* § 82.)

(4.) In *Wasson vs. First National Bank*, 8 N. E. Reporter, 97, (1886,) the Supreme Court of Indiana held that the Courts would, *ex officio*, take notice that the "*other* moneyed capital" constituted a material part of the whole moneyed capital of the State.

POINT FIVE.

Shares of stock of railroad and manufacturing, mining and other corporations, and the bonds and certificates of indebtedness of railroad and canal companies, as well as deposits in savings banks, being "other moneyed capital in the hands of individual citizens," within the meaning of the act of Congress, and having been exempted from taxation, in the hands of the holders thereof, the taxation of the capital stock or property of a corporation, under the laws of 1866 and 1884, is not a compliance with the requirement of the act of Congress.

It is contended, on behalf of the appellee, that the assessment of the capital stock, or property of corporations, under the laws of New Jersey, was substantially equivalent to an assessment of the shares or deposits in the corporation, in the hands of the holders or depositors, and that it was a virtual compliance with the act of Congress.

The theory of Judge **Wallace**, upon whose opinion the Court below decided this case on the point here involved, was that the difference between the taxation of all the shares of a corporation in the hands of the shareholders and the taxation of its capital stock in *its* hands, is one of *mode* only, that the net result or burden is precisely the same.

But we insist:

1. That the requirement of the act of Congress is that "the other moneyed capital," which is made the standard of comparison, shall be such as is in the *hands* of the individual holders thereof, and shall be assessed in his hands. In taxing a corporation on its capital stock, neither is done.

2. The capital stock of a corporation in its hands, and the shares of that corporation, are two entirely distinct species of property with separate ownership. Either may be taxed, or both, in the discretion of the legislature, and the taxation of one is not the taxation of the other.

3. The difference between the two methods is not one of form only, but one of substance, as well.

In the following cases this Court has held that *capital tock* and the *shares of capital stock* are distinct things, and that the taxation of both is not double taxation.

Farrington vs. *Tennessee*, 95 U. S. 686;
New Orleans vs. *Houston*, 119 U. S. 277;
Sturges vs. *Carter*, 114 U. S. 521;
Van Allen vs. *Assessors*, 3 Wallace, 573;
People vs. *Commissioners*, 4 Wallace, 244.

See to the same effect—

Albany City National Bank vs. *Maher*, 6 Fed. Rep. 418;
Commonwealth vs. *Hamilton Co.*, 12 Allen, 298.

In fact, the identical question here involved has been already decided by this Court in the cases of—

Van Allen vs. *Assessors*, 3 Wallace, 573;
People vs. *Commissioners*, 4 Wallace, 244;
Bradley vs. *Allen*, 4 Wallace, 459.

In the Van Allen case, the capital stock of the State bank was taxable under the State law, but the shares were not. It was claimed in that case, as it is in this, that the taxation of the capital stock was equivalent to the taxation of the shares; but this Court said it was not, for the reason that "the capital stock of banks may consist of bonds of the United States which are exempt from taxation," and because a tax on the shares is a tax on a different species of property from that of the capital or property of a corporation.

The fact is, that under the statutes of 1866, 1878, 1879 and 1884 it is not capital stock determined by value of shares that is taxable at all.

Under the act of 1866 it is "capital stock *paid in* and accumulated surplus," from which real estate and non-taxable investments, including investments in other States, are to be deducted. (See *Appendix II.*, § 4.)

Under the act of 1878, it is the "real and personal estate" of the corporation which is to be taxed "the same as the real and personal estate of an individual." This statute, however, does not apply to railroad, turnpike, canal, or banking corporations, or to savings banks.

The act of 1879 provides they shall be taxed on their "capital stock at its actual value and accumulated surplus," from which real estate is to be deducted.

The act of 1884, in relation to railroad and canal companies, taxes the property as such within the State.

It must be manifest to any inquirer, that, as declared by this Court in the Van Allen case, taxation on the *capital stock* of a corporation is not essentially a taxation on *shares*, for the reason that a corporation may have its capital stock invested in non-taxable property, whilst the shares are taxable, if at all, irrespective of the investments of a corporation.

To illustrate:

If two corporations, side by side, have each a capital stock of $1,000,000, and invest $600,000 thereof in Government bonds, State bonds or property beyond the State, the one which is taxable upon its capital stock will be taxed upon only so much of it as was not invested in the non-taxable securities or elements, to wit, $400,000; if the rate should be two per cent., the total tax would be $8,000. In the tax upon the shares of the other corporation in the hands of the holders no such deductions can be made, and the shareholders would be assessed at the full value of their shares, to wit, in the aggregate $1,000,000, which, at the same rate, would produce a tax of $20,000.

This is precisely the situation here. The appellant has its entire capital and a portion of its surplus invested in bonds of the government of the United States, but its shares were assessed at their full market value, irrespective of such investment, and a tax is assessed in this case upon such entire value.

Neighboring corporations, having the same amount of capital and similar investments, taxable upon the capital stock in their hands, are enabled to deduct the entire amount of such investments without payment of any tax.

The statute of 1884, in relation to taxation of the property of railroad and canal companies, exempts from taxation in the hands of the holders thereof, not only the shares of stock, but also the bonds and certificates of indebtedness issued by those companies.

In no sense can it be said that the taxation of the property of a corporation is an indirect burden upon the bondholder. It is a matter totally indifferent to him whether the corporation pays any tax or not. He gets his interest in either case.

Hence, the argument made, (by Judge WALLACE in his opinion,) to the effect that a tax upon the capital stock is indirectly a tax upon the shares, cannot apply to the exemption of the *bonds* of the corporation in the hands of the bondholders.

And, yet, it is in a sense true that the interest which the bondholder has in the *property* of a corporation is a greater one than that of a shareholder, for he has a lien, at least, upon the property binding it.

The same result follows with relation to savings banks as other corporations; by taxing them upon their property, they cannot be assessed upon their non-taxable or exempted property; which would not be the result were the depositors themselves taxed upon their deposits, which are only credits due to them by the corporation.

In the argument in the Court below on the motion for a preliminary injunction, much stress was placed by the counsel for the appellees upon the public policy in favor of the exemption of deposits in savings banks, as essential to the encouragement of a habit of thrift and economy among people of the smallest earnings.

It is impossible to see how it could have been contemplated by Congress, as such exemptions were to be excluded from the phrase, "other moneyed capital, in the hands of individual citizens," in view of the enormous amount of the deposits in savings banks existing then and now throughout the country. They reached a sum of more than double the capital stock of all the National Banks, and are potent factors in the financial and commercial world, competing with, and, by reason of their exemption from taxation, discriminating against, the National Banks in their investments.

POINT SIX.

Several questions were raised by the defendants, upon the preliminary hearing before the Circuit Judge, (McKENNAN,) which, in view of the fact that no argument took place, and no opinion was delivered by the Court below upon the final hearing, it may be desirable now briefly to discuss:

1. The first of these questions was: Has the bank any right or interest to file this bill, and raise the questions therein presented? And is an injunction the proper remedy?

We claim that these questions were decided by this Court, in

Hills vs. *Exchange Bank*, 105 U. S. 319.

"A National Bank may, on behalf of its sharehold-
"ers, maintain a suit to enjoin the collection of a tax
"which has been unlawfully assessed on their shares by
"the State authorities."

And the same point was decided in

Cummings vs. *Bank*, 101 U. S. 153;
City National Bank vs. *Paducah*, Thompson's National Bank Cases, 300;
Allen vs. *B. & O. R. R. Co.*, 114 U. S. 311.

In which this Court, by Mr. Justice MATTHEWS, said:

"The bill prays for an injunction on the several
"grounds of irreparable damage. (?) That the acts com-
"plained of prevent the proper exercise by the complain-
"ant of its franchise, involving a public duty, of opera-
"ting the railroads of which it is lessee, and in posses-
"sion to avoid multiplicity of suits, the want of adequate
"remedies at law, to remove the cloud upon the title to
"the railroad property, occasioned by the fact that as-
"sessed taxes are a lien thereon, and because it is neces-
"sary to protect the complainant in the immunity to
"which it is entitled, by virtue of the contract with the
"State of Virginia, secured against State laws impairing
"its obligations by the constitution of the United States.

"It is deemed proper to add a few observations on the
"question of the jurisdiction of the Circuit Courts, in
"such cases in equity, to grant relief by injunction. The
"circumstances of this case bring it, so far as that remedy
"is in question, fully within the principle firmly estab-
"lished in this court by the decision in *Osborn* vs. *The*
"*United States Bank*, 9 Wheat 739, and within the terms
"of the rule as declared in *Cummings* vs. *National Bank*,
"101 U. S. 153.

"The jurisdiction was exercised with energy in be-
"half of a stockholder in a banking corporation in *Dodge*
"vs. *Woolsey*, 18 How. 331, where the refusal of the di-

" rectors of the company to resist the collection of an un-
" constitutional tax was made the ground of interposition
" in behalf of a stockholder as a breach of trust.

" The same principle was applied in the case of the
" *State Railroad Tax Cases*, 92 U. S. 575. In the same
" case the Court said: 'In the examination which we
" have made of these cases, we do not find any of the
" matters complained of to come within the rule which
" we have laid down as justifying the interposition of a
" court of equity. There is no fraud proved if alleged.
" There is no violation of the constitution, either in the
" statute or in its administration, by the board of equali-
" zation. No property is taxed that is not legally liable
" to taxation, nor is the rule uniformity prescribed by the
" constitution violated.' If the facts here negatived had
" been affirmed, the converse of the rule would have been
" equally applicable. In *Transportation Co.* vs. *Parkers-*
" *burg*, 107 U. S. 691, 695, it was declared that a bill in
" equity would lie which seeks to have a wharfage ordi-
" nance declared void, and for an injunction to restrain
" further collecting under it, and any further interference
" with the right of the complainant to the free navigation
" of the Ohio river, and perhaps as incidental to the other
" relief, a demand for return of the wharfage already paid.

" The remedy to restrain by injunction taxes levied
" upon railroads, in alleged violation of a contract with
" the State, was administered in *Tomlinson* vs. *Branch*,
" 15 Wall. 460, and in numerous other similar cases
" where it has been denied, the jurisdiction to grant the
" relief if the facts had warranted it, has been assumed
" without question. And see *Litchfield* vs. *County of Web-*
" *ster*, 101 U. S. 773.

" In the case of National Banks, the assessment and
" collection of taxes illegally assessed under the authority
" of State laws, in violation of acts of Congress, are
" habitually restrained by the preventive remedy of in-
" junction, and the jurisdiction of the courts of the
" United States in those cases is regarded as in the
" highest degree beneficial and necessary to prevent the
" agencies of the government of the United States from

" being hindered and embarrassed in the performance of
" their functions by State legislation. The exercise of
" that jurisdiction, and by means of that remedy, in such
" cases, is to vindicate the supremacy of the Constitution,
" and to maintain the integrity of the powers and rights
" which it confers and secures, and that jurisdiction is
" vested in the courts of the United States because the
" cases embraced in it are necessarily cases arising under
" the Constitution and laws of the United States.

" Where the rights in jeopardy are those of private
" citizens, and are of those classes which the Constitution
" of the United States either confers or has taken under
" its protection, and no adequate remedy for their enforce-
" ment is provided by the forms and proceedings purely
" legal, the same necessity invokes and justifies, in cases
" to which its remedies can be applied, that jurisdiction
" in equity vested by the Constitution of the United
" States, and which cannot be affected by the legislation
" of the States.

" In the present case, the jurisdiction in equity to
" grant the relief prayed for by injunction, and the pro-
" priety of its exercise, are indisputable."

2. Is it necessary for the complainant to pay, or offer to pay, any part of the tax assessed upon its shares of stock as an equitable sum due by the assessed person?

It has become a rule in equity that before a complainant is entitled to an injunction restraining the collection of a tax, he must pay or tender so much thereof as is justly due.

Pelton vs. *National Bank*, 101 U. S. 143.
Kimball vs. *The National Bank*, 103 U. S. 732.

It is to be observed that this class of cases is such only as seeks to restrain the collection of a tax which is alleged to be in *excess of what is lawfully due.* The complaint is that the taxpayer is assessed for more taxes than he ought to have been assessed for, not that he is assessed for property that ought not to be assessed at all.

In the case before the Court, the claim made by the appellant is that the entire tax charged against the appellant's shareholders was unconstitutionally imposed, and therefore that the assessor had no jurisdiction of the property so sought to be charged.

In our view of the case either *all* of the taxes are due *or none*—if all, then we must fail in our case; if none then there is no equitable sum to be paid.

3. Does the proof show that the shares of stock of corporations, taxable on capital stock, are now "in the hands of individual citizens of the State?"

The proof is that the shares of stock of the corporations created by the State of New Jersey have been exempted from taxation. We claim that the presumption is that the shares of corporations so created by the State of New Jersey are held and owned by citizens of that State; we claim that this is itself a *prima facie* presumption.

Ohio & Mississippi R. R. Co. vs. *Wheeler*, 1 Black, 268;
Marshall vs. *B. & O. R. R. Co.*, 16 Howard, 392;
Muller vs. *Dows*, 94 U. S. 445.

For the reasons above stated, it is respectfully submitted that the decree of the Court below should be reversed.

CHARLES W. WELLS,
JOHN W. TAYLOR,
Of Counsel for Appellants.

Appendix I.

Statutory provisions for the taxation of bank shares in New Jersey.

1. "The stock of every bank established under and by virtue of the acts of the Congress of the United States, including State banks, shall be assessed in the township or ward wherein the bank is located, to all [*non-resident*] stockholders thereof; and it shall be the duty of each of the said banks to retain and pay the amount of the tax assessed to each of the said [*non-resident*] stockholders thereof, out of the dividends from time to time declared; and said tax shall be a lien on each stockholder's share of the stock from the day designated by law for commencing the assessment, and the same shall be liable to be levied on and sold by virtue of a tax warrant duly issued against the person taxed, as now directed in other cases."

(Note. The words in brackets indicate the modification of the section resulting from the act next quoted.)

(See *Act of April 11, 1866*, Sec. 16;
Session Laws, p. 1078, Ch. 487;
Revision, p. 1156.)

2. "Every person shall be assessed in the township or ward where he resides for all shares of the stock of any National Bank in the State, or of any bank organized under the laws of this State owned by him or in his possession or control as trustee, guardian, executor, or administrator, and in case said owner, trustee, guardian, or executor *shall be a non-resident of this State*, then and in that case, *such bank* shall be assessed to the amount of such shares so owned or held by non-residents as aforesaid, in the manner now provided by statute in the case of other corporations."

(See *Act of April 1, 1869*, Sec. 1;
Session Laws, p. 1149, Ch. 462;
Revison, p. 1161, pl. 99.)

Note. Judicial construction of the act of 1869, in connection with Section 16, of the act of 1866:

> "By the act of April 1, 1869, stockholders resident in the State, were required to be taxed for the stock of National Banks in the townships or wards in which they respectively resided, and the bank was to be assessed for stock owned by non-residents of this State. *In these particulars only the act of 1866 was altered by the act of 1869.*"
>
> *State (North Ward National Bank, pros.,)* vs. *City of Newark*, 10 Vroom, p. 384.

Although the Chancellor, in his opinion in the same case, on error, in the Court of Errors and Appeals, (*11 Vroom*, p. 559,) incidently remarked that Section 16 of the act of 1866, "was *repealed* by the act of 1869," he must be understood as meaning a PARTIAL repeal, *i. e.*, to the extent that it was inconsistent with the act of 1869, and as explained by the opinion in the Supreme Court. There was no *express* repeal.

Appendix II.

Statutory provisions for the taxation, or exemption from taxation, of "other moneyed capital in the State of New Jersey."

1. All private corporations of this State, except banking institutions, and except those which, by virtue of any contract in their charters or other contracts with this State, are expressly exempted from taxation, and except mutual insurance companies specially taxed, shall be and are hereby required to be respectively assessed and *taxed at the full amount of their capital stock paid in and accumulated surplus*; but any real estate which such corporations may lawfully own in any other State than this State, shall not be liable to be estimated in such accumulated surplus; *and the persons holding the capital of such corporations shall not be assessed therefor*; and such corporations as have no capital stock, other than those above excepted, shall be assessed for the full amount of their property and valuable assets, without any deductions for debts and liabilities; *but depositors in savings banks taxed by virtue*

of this section, shall be exempted from taxation on their personal estate to the amount of their deposits."

(See *Act of April 11, 1866*, Sect. 15; *Session Laws*, p. 1078, ch. 487; *Revision*, p. 1156, pl. 74.)

2. All real and personal estate of every corporation incorporated by an act of the legislature, or by the filing of a certificate or otherwise, under any general law of this State, *shall be taxed the same as the real and personal estate of an individual: provided*, however, that the provisions of this section shall not apply to railway, turnpike, insurance, canal, or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations."

(*Revision*, p. 196, pl. 105, as amended by act of March 7, 1878, *Session Laws*, p. 61.)

3. "All corporations, whether manufacturing corporations or otherwise, organized or acting under the provisions of this act, or the act to which this is a supplement, *shall hereafter be taxed upon their capital stock at its actual value and accumulated surplus.*"

(See *Act of March 14, 1879*, Sec. 2; *Session Laws*, p. 348, ch. 206.)

Note. **The last mentioned act did not repeal the one next preceding, nor did the next preceding repeal the *exemption* contained in that first above named.**

See *State* vs. *Yard*, 13 Vr. 357, 364;
Jersey City Gas Light Co. vs. *Jersey City*, 17 Vr. 194.

4. The real estate of private corporations *and banks* situate within this State, (except the banking house and lot of ground whereon the same is erected, of banking institutions whose stockholders are taxed,) *shall be assessed to said corporations or banks in the township or ward in which said real estate is located, in the same manner as the real estate of individuals; and the amount of said assessment shall be deducted from the amount of the capital stock* and surplus

and funded debt, or of the valuable assets of the corporation."

(See *Act of April 11, 1866*, Sect. 23; *Session Laws*, p. 1078, ch. 487; *Revision*, p. 1159 pl. 81.)

Appendix III.

"All the property of any railroad or canal company, not used for railroad or canal purposes, shall be assessed and taxed by the same assessors and in the same manner, and at the same rate as the taxable property of other owners in the same municipal division or taxing district; all other property of any railroad or canal company shall be assessed and taxed as hereinafter directed; the tax imposed by this act shall be in lieu of all other taxation upon the property subject to taxation under the provisions of this act; *in all cases where the real estate, tangible personal property and franchise of any company are assessed and taxed under this act, the shares of stock and the bonds and certificates of indebtedness of such company shall not be taxed in the hands of the shareholders, bondholders and creditors, except as hereinafter provided.*"

(See *Act of April 10, 1884*, Sec 1, *Session Laws*, p. 142, ch. 1010.)

Appendix IV.

Statutes of New Jersey, providing for the gathering, compilation and publication of financial statistics concerning corporations, &c.

1. *Savings Banks*, (*Rev.* p. 1066, pl. 42.)

It shall be the duty of the Secretary of State, on or before the fifteenth day of February, in each year, to communicate to the legislature a statement of the condition of every such corporation, [Savings Banks,] from which a report has been received for the preceding year;

and also the name and location of savings corporations, authorized by the State Board, during the previous year, with the date of their incorporation, and particularly describing those incorporated at any time, which have commenced business during the previous year.

2. *Insurance Companies.* (*Rev.*, p. 516, pl. 51.)

The Secretary of State shall be, by virtue his office, Commissioner of Insurance, and it shall be his duty to make annual report to the legislature containing a summary of the statement of every insurance company filed in his office as required by law, together with such facts and information touching the same as may be in his possession, which report shall be published as are other legislative documents; and for the purpose of carrying out the provisions of this act the said secretary shall be authorized to expend from the sum annually received from taxes on insurance companies of other States, an amount not exceeding ten percentum thereof; the penalty for violation of this act, except where otherwise provided, shall be the same, to be collected in the same manner as provided in the ninth section of this act.

3. *Railroads and Canal Companies.* (*Session Laws of 1884*, p. 154, § 21.)

Section 21. And be it enacted, on or before the first day of July next, and on or before the first Tuesday of May in each year thereafter, any person or company running, operating or constructing any railroad or canal in this State, shall return to the State Board of Assessors statements or schedules, subscribed and sworn to by the president or other chief officer, before some officer of the State authorized to administer oaths, of the property of such railroad or canal, as it existed on the first day of January preceding, which, for each railroad, shall be as follows: * * * * *

III. A statement or or schedule showing—

(*a.*) The amount of capital stock authorized and the number of shares into which such capital stock is divided.

(*b.*) The amount of capital stock paid up.

(*c.*) The market value, and if no market value, then the actual value of the shares of stock.

(*d.*) The total amount and the details and particulars of all indebtedness.

(Section 2 of the same act provides that the board *shall keep a report of their proceedings, and shall annually report to the legislature.*)

4. "*An act to provide for the imposition of State taxes upon certain corporations and for the collection thereof.*" Approved April 18, 1884. (*Session Laws of 1884*, p. 232, ch. 159.)

(This act provides for the imposition of a State tax on corporations, [other than railroad, canal, manufacturing, mining and banking corporations,] on the basis of the amount of capital stock and otherwise.)

Section 5 enacts as follows:

The State Board of Assessors shall certify and report to the Comptroller of the State, on or before the first Monday of June, in each year, a statement of the amount of gross receipts, as returned by each company to, or ascertained by the said board, and the amount of tax due thereon respectively, at the rate fixed by this act; such tax shall thereupon become due and payable, and it shall be the duty of the State Treasurer to receive the same; if the taxes of any company remain unpaid on the first day of July, after the same become due, they shall thenceforth bear interest at the rate of one per cent. for each month until paid; the State Board of Assessors shall have power to require of any corporation subject to tax under this act, such information or reports touching the affairs of such company, as may be necessary to carry out the provisions of this act; and may require the production of abstracts of the books of such companies; and may swear and examine witnesses in relation thereto; the Comptroller shall receive as compensation for his services under this act and under the act entitled "An act for the taxation of railroad and canal property," approved April tenth, eighteen hundred and eighty-four, the sum of five hundred dollars annually.

5. *Financial Condition of the State,* (*Rev.* p. 1218, pl. 35.)

The Comptroller shall, within ten days after the annual meeting of the legislature, report to each house the financial condition of the State, an estimate of expenditures for the succeeding year, arranged under their appropriate heads, together with all the transactions of his office; and the usual number of printed copies of the report for the use of the senate and general assembly, shall accompany the same; the printing to be executed by the current printer to the legislature of the year for which the report is made.

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Office Supreme Court U. S.
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MAR 7 1887
JAMES H. McKENNEY

Ward & Tichenor, Law Case Printers, 832 and 834 Broad St., Newark, N. J.

Supreme Court of the United States.

October Term, 1886. No. 1301.

THE NATIONAL NEWARK BANKING COMPANY,
Appellant,
and
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, N. J., *et al.*,
Appellees.

On Appeal from Decree of U. S. Circuit Court, District of New Jersey

REPLY TO BRIEF OF APPELLANT.

As to so much of appellant's brief as is not already covered by the brief for appellees, we submit the following reply:

As to the *statement of the case* in the brief for appellant, it is incorrect in stating that the exemption of the bonds and certificates of indebtedness of railroad and canal corporations (claimed to amount to $124,281,259,) under the act of April 10, 1884, is in issue. No complaint is made in the bill of any other exemptions than the exemption of the shareholders in corporations, under the act of April 11, 1866. See *Paragraph 7 of Bill*, Sec. A, (*Record*, page 5.) The introduction of this new claim by the appellant is an afterthought, and inasmuch as the decision upon it would fairly involve the examination and consideration of the whole of the act of April 10, 1884, and of the whole system of railroad taxation in New Jersey, the appellant should not be allowed to introduce the question for the first time on the appeal.

The only standing which the appellant (being a National Banking association, located in the same State with defendants,) had in the United States Circuit Court, was under the United State laws, (18 Stat. L. 470; 1 Suppl. Rev. 173,) providing for the original jurisdiction of that Court in suits "arising under the constitution and laws of the United States," and in order that a federal question may appear on the record for the purpose of giving the Court jurisdiction, it was absolutely essential that the complainant should spread upon the record the State statutes, which he complains of as violating the federal law, thus raising a federal question, and if the State statutes *complained of in the record* do not violate any right given by United States laws, neither the Circuit Court, nor this Court on appeal, have any jurisdiction to pronounce a decree as to the violation of federal rights alleged to have been sustained by reason of other statutes than those complained of.

In other words, the only method in a case like the present of showing that a question under United States laws has arisen, is to specify in the record the State statutes or laws which are alleged to contravene the United States statute or laws.

Upon the merits of the question as to this exemption of the bonded indebtedness, this being a form of indebtedness secured by mortgage upon the property of the company, which is itself taxed under the act of 1884, the case comes within the principle of *Hepburn* vs. *School Directors*, 23 Wal. 480, where it was held that an exemption of mortgages, &c., did not invalidate the tax, because it was evidently intended to prevent a double burden by the taxation, both of property and debts secured by it.

Also, we call attention to the fact that no proof has been submitted, showing that at the time the tax complained of was laid, any of the bonds were held by residents of the State of New Jersey.

We submit the following observations upon the cases cited under Point Five, (p. 19, &c.,) of appellant's brief, as to the taxation of corporations and their stockholders:

Farington vs. *Tennessee*, 95 U. S. 679.

In this case the charter of a bank provided that the bank "shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes." A stockholder being also taxed on his shares, and the State Court affirming the tax as valid, and as not impairing the obligation of any contract, a writ of error was taken to this Court, and the question was, whether, by the proper construction of the Tennessee statute, the legislature intended to exempt the shares in the hands of the holders. The majority of the Court held, that the legislature did so intend, upon the ground that the tax directed to be paid by the bank, was not in substance a tax on the bank, as distinguished from a tax on the shares, but was a tax upon the shares, to be paid by the bank, and that the identical thing taxed by the charter was thus again taxed in violation of the contract. The minority of the Court differed as to this construction of the State law, holding that the legislature did not intend to exempt the shareholders, but only the bank itself from public taxation. The case is an illustration of the inclination of this Court not to allow substantial double taxation, unless the statute clearly requires such construction, and is not an authority on the question of whether taxation of capital or property is a substantial equivalent to taxation on shares.

Sturges vs. *Carter*, 114 U. S. 511.

The laws of Ohio, (see p. 519, opinion of Justice Woods,) required the taxation of all property of all residents of the State, including investments in stocks, joint stock companies, &c., except such as was *expressly exempted* by the act. The law, then, (see p. 520,) *expressly exempted* any share of stock in a corporation which was required to return its capital or property for taxation in the State. A stockholder in a foreign corporation, (The Western Union Telegraph Company,) claimed the benefit of the exemption upon the ground that this company returned its property *situated in Ohio* for taxation. The property situated in Ohio was only a small portion of the property of the company. The Court *held* that the statute did not intend to confer exemption in cases where only a small portion of the property of the company was liable, and that neither by express terms or fair implication was the stockholder within the terms of the exemption.

Van Allen vs. *Assessor*, 3 Wall. 573.

The main question argued and decided in this case was the question stated by Justice NELSON, at page 582, viz.: "Whether the State possesses the power to authorize the taxation in the hands of the shareholders "of the shares of National Banks whose capital was "wholly vested in United States securities." The Court were of the opinion that the State had such power, because it was conferred by the act of Congress which created the National Banks, and Congress had the right to make, and had made, this liability to State taxation one of the conditions for the privileges given to these associations. The majority of the Court held, that as to the form of taxing the National Banks, the intention of the act was to tax the shares in the hands of the shareholders, as distinct from the property or capital stock of the bank itself, and without any reference to the amount of the capital invested in the bonds of the United States.

Upon this latter point the minority of the Court were of opinion that the bonds should be deducted from the total valuation of the property, for the purpose of giving the taxable value of the share, and that this method would make the taxation uniform with other moneyed capital taxable by the State. The entire Court united in reversing the judgment of the New York Court of Appeals, upon the ground that the banking acts, as they then stood, required that the tax assessed upon the shares of National banks should not exceed the rate imposed upon the shares of the State banks, and that

APPENDIX.

The statement in appellant's brief (p. 12, Point 3) that there is no provision in the Railroad Taxation act for the taxation of the bonds and certificates of indebtedness of railroad and canal companies is not correct, as will appear from sections 10 and 11 of the act (*Laws of* 1884, p. 142, &c.), which provide for taxing the mortgages and certificates in case the companies claim deductions, as follows:

"10. *And be it enacted*, That in case any railroad or canal company shall claim a deduction on account of any mortgage or debt secured thereby, the said board are hereby required to allow the same in the cases in which and to the extent to which the assessor is authorized by law to allow a deduction in the case of any other owner of mortgaged lands, and thereupon the said mortgage and the estate of the mortgagee in the land mortgaged shall be subject to taxation in the same manner, as nearly as may be and at the same rate or rates, as the estate of the mortgagor; the deduction shall be made *pro rata* from the valuation of each class of property covered by the mortgage, and the amount received from the taxation thereof shall be distributed as if the tax had been paid by the mortgagor without deduction."

"11. *And be it enacted*, That if any railroad or canal company shall claim a deduction in any case in which such deduction could be claimed under the twentieth section of an act entitled 'A further supplement to an act entitled 'An act concerning taxes,'' approved April fourteenth, eighteen hundred and forty-six, which supplement was approved April eleventh, eighteen hundred and sixty-six, other than the deduction last hereinbefore mentioned, the said board are hereby required to allow the same, and the said indebtedness so allowed shall be taxable as other debts owing to creditors residing in this State are taxable, and at the same rate; but the assessment thereof shall be made by said board, and not by the local assessor, and the tax shall be paid to the comptroller of the State, to the credit of the fund derived from taxation under this act; the deduction shall be made *pro rata* from the valuation of each class of property of the debtor assessed, and shall be distributed as if the tax had been paid by the debtor without deduction; *provided*, that no deduction, either for mortgage or other indebtedness shall be allowed unless the same shall be applied for in the report and statement required to be made pursuant to section twenty-one of this act, and unless the nature of the indebtedness and the name and residence of the creditor and the different taxing districts in which the mortgaged land lies shall be specified."

the New York law imposed no tax, whatever, on the shares of State banks, (see opinion, **Nelson**, *J.*, p. 581, and **Chase**, *Ch. J.*, p. 603.) **Nelson**, *J.*, put this decision upon the ground that taxation of State banks upon their capital was not equivalent to taxation upon their shares, because the capital may consist of non-taxable U. S. bonds, (see opinion, p. 581.)

The New York banks, like the National banks, were created for the purpose of investing in securities, and were required to invest in them, (see opinion of Ch. J. **Chase**, p. 600,) and, as to corporations of this character, taxation of the property or capital of the bank may not be a substantial equivalent for taxation of the shares; but the case is not an authority for the position taken by complainant, that as to corporations created for the purpose of owning and managing taxable property taxation of the capital or property is not such equivalent.

This question was not considered, and the case cannot be taken as authority for the complainant on the point stated. It is to be noted that the clause in the act of June 3, 1864, restricting taxation of National bank shares to the rate of taxation of State bank shares has been repealed. The above case, and also the cases of

> *People* vs. *Commissioners*, 4 Wall. 244, and
> *Mackey* vs. *Allen*, 4 Wall. 459,

which approved *Van Allen* vs. *Assessors*, were decided while this law was in force, and both the latter cases related to banking institutions.

JOSEPH COULT,
JOHN R. EMERY,
Counsel for Appellees.

121-163

MAR 5 1887
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 1301. October Term, 1886.

THE NATIONAL NEWARK BANKING CO.,
Appellant,

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, N. J., and A. JUDSON CLARK,
Receiver of Taxes,
Appellees.

On Appeal from Decree of the Circuit Court of the United States for the District of New Jersey.

BRIEF FOR APPELLEES.

JOSEPH COULT,
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NEWARK, N. J.:
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1887.

WARD & TICHENOR, Law Case Printers 832 and 834 Broad St., Newark, N. J.

United States Supreme Court.

OCTOBER TERM, 1886. No. 1301.

THE NATIONAL NEWARK BANKING COMPANY OF NEWARK, NEW JERSEY,
Appellant,
and
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, AND A. JUDSON CLARK, RECEIVER OF TAXES,
Appellees.

On Appeal from Decree of U. S. Circuit Court, District of New Jersey

By order of the Court, made at the present term, this cause was advanced on the list, and the hearing set down for the first day after the February recess, immediately after No. 1258, October Term, 1886, *The Mercantile National Bank of the City of New York* vs. *The City of New York, et al.*, in which some of the questions here at issue are involved.

BRIEF FOR APPELLEES.

I.

STATEMENT.

This is an appeal from a final decree of the Circuit Court of the United States for the district of New Jersey, dismissing the bill filed by the appellant against the appellees, the decree having been made on final hearing upon bill, answer, replication and proofs, (*Rec.* p. 20, fol. 35.)

The bill was filed in the Circuit Court on October 23, 1885, by the appellant, an association organized under the National Banking Laws, and located in Newark, N. J., against the municipal corporation of Newark, and Clark, its receiver of taxes. The object of the bill was to enjoin and restrain the collection of the taxes, which had been assessed for the year 1885, upon certain of the shares of the capital stock of the bank, (*Rec.* p. 4, fol. 7, and p. 8, fol. 13.)

The capital of the bank is $500,000, and its whole number of shares 10,000, each of $50 par value.

The shares as to which taxation is complained of, were those owned by non-residents of the State of New Jersey, (1,506 shares), for which the bank itself was directly taxed, and the shares owned by residents of the city of Newark, (5,716 shares,) which were assessed against the individual owners and not against the bank, (*Rec.* p. 4, fol. 7.) As to the residue of the shares (2,778) no relief is asked.

These assessments against each of the shareholders, resident in Newark, for their respective shares, and against the bank for the shares of the non-resident shareholders, were made under the provisions of the following law of April 1, 1869, relating to the taxation of National Bank shares, (see *Rev. of 1877*, p. 1161, par. 99.)

> "Sec. 1. That every person shall be assessed in the township or ward where he resides, for all shares of the stock of any National Bank in this State, or of any bank organized under the laws of this State, owned by him or in his possession or control, as trustee, guardian, executor or administrator; and in case said owner, trustee, guardian, executor or administrator, shall be a non resident of this State, then, and in that case, such banks shall be assessed to the amount of such shares so owned or held by non-residents, as aforesaid, in the manner now provided by statute in the case of other corporations."

In the assessment for the year 1885, the shares of stock were, for the purposes of assessment, valued at $65 per share, (*Bill*, p. 4, fol. 7; *Ans.*, p. 13, fol. 22,) and a tax for municipal, county and State purposes was levied on the taxable property (including the bank shares at these valuations,) at the rate of 1.90 per 100, (*Ibid.*) There is no direct statement in the bill, nor is there any proof, of the amount of tax involved in this suit, but, calculating from the rate given, the amount of the tax assessed against the bank itself for these shares would be $1,430.70.

On the same basis of calculation, the amount involved by reason of the assessment against the individual shareholders, resident in Newark, would be $5,430.20, and the total amount involved in the suit would thus be $6,860.90, and sufficient to give this Court jurisdiction on appeal.

(Under the laws of New Jersey, however, no separate assessment is specially made against shareholders for the value of their bank shares, but this valuation is included in, and makes part of, the total valuation of taxable personal property. Under these laws, also, the shareholder is entitled to deduct from the taxable property [including the bank shares as valued] the total amount of his indebtedness to resident creditors; and if the deduction absorbs the whole taxable property, including the valuation of the shares, no tax whatever would be claimed or collected by the city. There is no allegation or proof as to the amount for which any of these shareholders were actually taxed nor as to whether any, or how many, of the shareholders were relieved of the burden of any tax by reason of deductions; and it may be that many of them claimed and received such deductions, and that as to them no tax whatever is in dispute. These cases would, perhaps, reduce the amount involved in the appeal below the sum of $5,000.) But, assuming the jurisdiction of the Court, we examine the

CLAIM OF THE BILL.

The bill (*Par.* 7, *Rec.* p. 4, &c.,) claims that the statutes of the State of New Jersey, in relation to the taxation of the shares of stock of National Banks, violate that restriction imposed by the act of Congress (*Rev. Stat.*, § 5219,) which provides, "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," and that, by reason of such violation, the whole assessment of tax is void.

The bill, as it was necessary that it should, then specifies on the record, the statute or statutes, which it thus complains of, and designates a single statute, that of April 11, 1866, as exempting other moneyed capital from taxation. As to this statute, the bill alleges (par. 7, Sec. *a* and *c*, *Record*, p. 5,) that, by one of its sections, the 15th, it expressly exempts from taxation two classes of taxable property, viz.:

(1.) The shares of the capital stock of the corporations mentioned in the section, in the hands of the shareholders, and which are not to be included in the taxable property of the persons holding the shares; and

(2.) The deposits in savings banks, which are not to be included in the taxable property of the depositors.

The bill further alleges (*Rec.* p. 5, par. 7, sec. *b* and *d.*) that these exempted classes together embrace a vast amount of taxable property, the taxable value of the shares of stock so exempted in the hands of individuals being over $300,000,000, and the deposits in savings banks being over $24,000,000.

No other statutes or laws of the State are complained of in the bill, as violating the act of Congress, and the sole issue on the record, so far as the validity of the New Jersey statutes is concerned, therefore, is, *whether these exemptions of stockholders in private corporations and depositors in savings banks*, under the 15th section of the act of April 11, 1866, *violate the restriction imposed by Congress.*

The bill while it sets out the exemptions in this section of the statute, suppresses that portion of the section which shows that the exemptions of the stockholders and depositors *only exist where the corporations themselves* are *taxed*, either for their whole capital stock paid in and surplus, or, where there is no capital stock, for the whole amount of their property and assets, without the deduction for debts or liabilities, which is allowed to individuals.

The section *in full* is as follows, see *Rev. of 1877*, p. 1156, (the italics not being in the statute):

"74. Sec. 15 That *all private corporations* of this State, except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this State are expressly exempted from taxation, and except mutual life insurance companies specially taxed, *shall be* and are hereby required to be respectively *assessed and taxed at the full amount of their capital stock paid in and accumulated surplus;* but any real estate which such corporations may lawfully own in any other State than this State, shall not be liable to be estimated in such accumulated surplus, *and the persons holding the capital stock of such corporations shall not be assessed therefor;* and such *corporations as have no capital stock* other than those above excepted, shall be *assessed for the full amount of their property and valuable assets,* without any deduction for debts and liabilities; but *depositors in savings banks, taxed by virtue of this section, shall be exempted from taxation on their personal estate to the amount of their deposits; provided* that premium notes held by life insurance companies shall in no case be considered as future premiums, but shall be included in the valuable assets of said company."

The omission of the bill to disclose the material and palpable fact, that the stockholders and depositors were exempted *only* when the corporations themselves were taxed, could not have been accidental, and would seem to be a sharp and unfair attempt to display, *on the face of the bill,* an enormous exemption from taxation altogether, when, in fact, no such exemption appears when the whole law is considered.

The law itself, upon the face of it, (Sec. 2,) declares its general intention in these plain words: "That all real and personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation at the full actual value thereof," &c.

In exempting the shares of stock in such companies, as themselves paid taxes, from taxation in the hands of the holders of the stock, it was evidently neither the object nor the intention of the State of New Jersey to exempt or relieve from taxation, the large portion of valuable property within its borders, represented by shares of stock, nor to discriminate in its favor, either as against National Bank shares or any other property. The general object of the law was to *tax all property*, and in reference to property owned by stock corporations, it was determined, (after many years' experience in taxing the shares, instead of the company,) that the best method to reach the moneyed capital invested in the company, was to tax the company for its capital stock paid in and surplus; and inasmuch as the capital stock and surplus constitute the whole of the property which, by any possibility, the shareholders are entitled to, and inasmuch as payment of this tax on the company must be directly made by the corporation, out of funds otherwise equitably belonging to the shareholders, the plain equity was recognized, that the shareholders ought not to be *again obliged to pay the tax themselves*, on their particular shares of this capital stock and surplus, the right to which was evidenced by their certificates of stock. The clear object and intention of the exemption was, we insist, not to discriminate *in favor* of shareholders of corporations, but to prevent unjust and unfair discrimination *against them*. The full display of the laws of New Jersey relating to taxation, will repel and dissipate the insinuation of the bill, that an enormous injustice has been done to the National Banks or any other property owners, and will reduce this branch of the case to its true aspect and proportions, viz., the questions:

(1.) Whether, by the taxation of these corporations for the full value of their property or stock, the moneyed capital in the hands of the shareholders, represented by the shares, is substantially taxed; (3d and 4th points, *infra*,) and, if this be true, then—

(2.) Whether the restriction imposed by the National Banking Act, as a condition of taxing National Bank shares, requires *not only* that the moneyed capital in the hands of individual shareholders, represented by shares in such corporations, shall be substantially taxed, *but also*, that the taxation itself shall be made directly against the shareholder. (5th Point, *infra*, p.)

As to the exemption of the depositors in savings banks to the amount of their deposits, we shall, in addition, insist,

(3.) That the method of taxing the banks themselves is not only substantially a tax upon the depositors for their moneyed capital represented by the deposit, but is practically, and from the character of the institution and deposits, a method more favorable to the holders of National Bank shares than the method of taxing the individual depositors would be.

(See 6th Point, *infra*, p..)

In addition to these three questions, a further question is involved in reference to the right of the bank to any relief in this bill, so far as relates to the tax assessed against the shareholders resident in Newark, for the amount assessed against them individually, and not against the bank, for the value of their shares; as to this branch of the case we shall further insist.

(4.) That as to these taxes made directly upon the residents of Newark, and not upon the bank, the Court will not interfere. The claim of the bank to relief in this respect, is not based upon any equities of its own, but upon alleged equities of the shareholders, on which equities the stockholders themselves do not insist.

(See 7th Point, *infra*, p.)

These four questions we shall consider in their order, after a preliminary statement in detail of the statutes of New Jersey in reference to the taxation of National Banks, (*First Point, infra,*) and of the corporations whose stockholders or depositors are exempted, (*Second Point, infra,*) together with the decisions of the Courts construing the same.

Points for Appellees.

FIRST POINT.

As to the laws of New Jersey relating to the taxation of the shares of National Banks.

Act of April 1, 1869, (*Pamphlet Laws*, 1869, p. 1149,) Rev. of 1877, p. 1161, par. 99, as follows:

"A further supplement to an act entitled "An act concerning taxes," approved April 14, 1846.

"SEC. 1. That every person shall be assessed in the township or ward where he resides, for all shares of the stock of any National bank in this State, or of any bank organized under the laws of this State, owned by him, or in his possession or control, as trustee, guardian, executor or administrator; or in case said owner, trustee, guardian, executor or administrator shall be a non-resident of this State, then, and in that case, such banks shall be assessed to the amount of such shares so owned or held by non-residents, as aforesaid, in the manner now provided by statute in the case of other corporations."

"2. And be it enacted, That all acts and parts of acts inconsistent with this act are hereby repealed, and that this act takes effect immediately."

Previous to the passage of this act of 1869, the tax upon the shares of all the stockholders resident in the State, as well as non-resident, was assessed against the bank under the sixteenth section of the act of April 11, 1866. *Pamphlet Laws*, 1866, p. 1085. (This section 16, is marked in the *Revision of 1877*, as *repealed*. See *Rev.* p. 1156:)

"16. *And be it enacted*, that the stock of every bank established under and by virtue of the acts of the Congress of the United States, including State banks, shall be assessed in the township or ward wherein said bank is located, to all the stockholders thereof; and it shall be the duty of each of the said banks to retain and pay the amount of tax assessed to each of the said stockholders thereof, out of the dividends from time to time declared; and said tax shall be a lien on each stockholder's shares of the stock from the day designated by law for commencing the assessment, and the same shall be liable to be levied on and sold by virtue of a tax warrant duly issued against the person taxed, as now directed in other cases."

This method of requiring the *bank* to pay the tax which had been levied on the shares of the stockholders, although the terms of the act, strictly construed, might be held to require a tax upon the shareholders, has received the approval of the United States Supreme Court in the case of *National Bank* vs. *Commonwealth*, 9 Wallace, 353, (1869), in which Judge MILLER said, (p. 363,) that this related to the mode in which the tax on the shares should be collected, and that Congress did not intend to prescribe to the States the mode in which the tax should be collected. He disposed of the insistment, that the law required the tax to be collected of the shareholders directly, as a "very nice criticism." It did not appear, in this case, that the rights of the shareholder (under the laws of Kentucky,) were, in any substantial respect, impaired by requiring the bank to pay the tax on his shares, and *the method* was, therefore, sustained.

But if in any States individual shareholders would be entitled to a deduction for indebtedness from the valuation of their taxable property, and the taxation of the bank instead of the shareholders, prevented this deduction, a substantial discrimination against the shareholders who had debts to deduct, would result, and the method of taxation would be, to that extent illegal, (see *Supervisors* vs. *Stanley*, 105 *U. S.*, 305, Oct. 1881.)

Inasmuch as the tax law of April 11, 1866, by Section 20 (*Rev.*, p. 1157, par 78), gave to individuals the right to deduct from their taxable property all *bona fide* debts to resident creditors, the assessment to the bank, of the tax on the shares, was liable to the above objection, and the Court of Errors and Appeals (the highest Court of the State) accordingly held, in *State, (North Ward National Bank, pros.)*, vs. *Newark*, 11 *Vroom*, (40 *N. J. Law*), 558, that the taxation of the bank, under the act of 1866, was substantially inconsistent with the taxation of the shareholders required by the act of 1869, and reversed the judgment of the Supreme Court in the same case, 10 *Vroom*, (39 *N. J. Law*,) 380, by which the assessment *against the bank* for the shares of the shareholders resident in Newark was sustained. *Chancellor Runyon*, delivering the opininn of the Court of Errors and Appeals, says, (11 *Vroom*, 40 *N. J. Law*, pp. 559–560), "That " section (the sixteenth of the act of April 11, 1866) was " repealed by the act of 1869," and also (p. 561) says, " Every shareholder resident here is to be assessed for " his shares in the township or ward where he resides. " Incidental to this taxation, is his right to a deduction " in respect of debts *bona fide* due and owing from him " to creditors residing within this State. This right is " liable to be affected by assessing his stock against the " bank. He would be deprived of it entirely if all his " property were in the stock. But it is enough to say " that it is his right, under the law, to have the assess" ment of tax upon his property, held in his own name, " made against himself, and it cannot lawfully be made " against any one else."

" The bank, too, has rights in the premises. If the " tax is illegally assessed against it, and it pays it, it " cannot receive it from the stockholders. The payment " would be an unjustifiable use of the funds of the " bank," &c.

The assessment made against the bank, was sustained, so far as the shares of non-residents was concerned, but set aside as to the shares of residents of the State, and this extended reference and quotation is made for the purpose of showing, that the highest Court of the State of New Jersey has decided, (1) that the 16th section of the law of 1886, under which the bank was directed to retain and pay the tax on all the shareholders, has been repealed ; (2), that the bank itself cannot be taxed for the shares of resident stockholders, and may set aside such assessment *in a court of law*, without resort to a court of equity ; (3), that the taxing system of the State, so far as residents are concerned, is based upon the individual and separate rights and duties of each taxpayer, which cannot be adjusted by allowing the bank in matters of taxation to represent the shareholders.

The above laws and decisions also show that New Jersey, by its early action in 1869, of its own accord, corrected the irregularity which the method of taxation under the act of 1866 unintentionally caused, and put National Bank stockholders, as to the rate and method of their taxation, upon the same basis with all other persons subject to taxation; and so just and equitable has been the system in its practical effect, that no complaint has ever yet been made in any of its courts, or in any other court, *by any shareholders*, against their taxation. For nearly twenty years these stockholders have contributed their just share toward the common burdens of the State and local governments, until the present combination of a few of the banks has undertaken the task of crippling or destroying the State's whole system of taxation, in its efforts to relieve some of their shareholders from a fair share of the public burdens. And this system, the best result of long experience and effort, is sought to be overthrown, as we shall see, not because of any substantial injustice to National Banks which it effects, but because a "very nice criticism" of the act of Congress affords some pretext for attempting its overthrow on account of its methods and forms of taxation.

SECOND POINT.

As to the laws of New Jersey relating to the taxation of corporations, whose stockholders are exempted by the 15th section of the act of April 11, 1866.

The corporations of New Jersey are those organized under its general laws relating to the formation of corporations, and those created by special charter prior to 1875, in which year a constitutional amendment prohibited further creation of corporations by special laws. These corporations, also, were either corporations with capital stock, divided into shares belonging to the shareholders, or corporations without capital stock, (as savings banks, mutual insurance companies, &c.)

Previous to the year 1866, the resident shareholders of corporations were taxed for the value of their shares of stock, and the corporations were exempted from taxation for so much of their property represented by their capital stock, as was liable to taxation in the hands of the shareholders, (*Pamphlet Laws*, 1854, p. 296, &c., *Nix. Dig.* 801, §§ 2, 4 and 5,) and, under this law, it was held by the Supreme Court, that the corporation could not be itself taxed for the value of the shares of the non-resident shareholders, nor could the non-residents themselves be taxed for the value of their shares. (*State* vs. *Thomas*, 2 Dutch. 181, N. J. Sup. Ct. 1857.) The shares of the stock *in the hands of the stockholders* were considered, both by the legislature and the courts, as representing the *property* of the corporation, (see opinions of Ch. Just. GREEN and Justice VREDENBURGH, pp. 182 and 186.)

The act of April 11, 1866, was a general revision of the system of taxation, made at a time when the Federal, State and local burdens required that all property fairly liable to taxation should be reached, and for the purpose of reaching *all the property represented by the stock of corporations*, the former system was changed, except as to banking institutions, and the corporations were taxed, the stockholders being exempted.

The shareholders in banking institutions, both State and National, were taxed on their shares (see Sec. 16, Laws of April 11, 1866, *supra*), and after excepting these institutions, and mutual life insurance companies, which were specially taxed by a law of March 24, 1864, (*Revision*, p. 1149,) and also excepting corporations which by contracts with the State were expressly exempted from taxation—all other private corporations of the State were by Sec. 15 taxed as follows: (See *Rev.* p. 1156.)

"74. Sec. 15. That all private corporations of this State, except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this State are expressly exempted from taxation, and except mutual life insurance companies specially taxed, shall be and are hereby required to be respectively assessed and taxed at the full amount of their capital stock paid in and accumulated surplus; but any real estate which such corporations may lawfully own in any other State than this State, shall not be liable to be estimated in such accumulated surplus, and the persons holding the capital stock of such corporations shall not be be assessed therefor; and such corporations as have no capital stock other than those above excepted, shall be assessed for the full amount of their property and valuable assets, without any deduction for debts and liabilities; but depositors in savings banks, taxed by virtue of this section, shall be exempted from taxation on their personal estate to the amount of their deposits; *provided*, that premium notes held by life insurance companies shall in no case be considered as future premiums, but shall be included in the valuable assets of said company."

No complaint is made in the bill, in reference to the taxation or exemption from taxation of either of these three classes of corporations excepted from the operation of Section 15, or of their shareholders or members, and the questions in the case relate only to the exemptions conferred by Section 15. The exemption given by this section, to shareholders in corporations whose taxation was therein provided for, still exists and is in force, although the provisions of the section have been changed, as to the method of taxing some of the corporations originally included in the act. Thus, by the law of March 7, 1878, which was a supplement to the general corporation act, it was provided, (see *P. L.* 1878, p. 61):

"Sec. 1. That all the real and personal estate of every corporation incorporated by any act of the legislature, or by the filing of a certificate or otherwise, under any general law of this State, shall be taxed the same as the real and personal estate of an individual; *provided, however*, that the provisions of this section shall not apply to railway, turnpike, insurance, canal or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational institutions.

"Sec. 2. That all acts or parts of acts to which this is a supplement conflicting with this act, be and the same are hereby repealed, and that this act shall take effect immediately."

There was no provision in this act of 1878, as to the exemption from taxation of the shareholders in the companies whose properties were thus taxed, and the Supreme Court of New Jersey, in the year 1883, held that these shareholders were no longer entitled to the exemption from taxation which existed under the act of April 11, 1866, Sec. 15, when the companies paid tax on their capital stock and surplus, for the reason that the repeal of the method of taxing the corporations, carried with it the repeal of the exemption of the shareholders.

> *State, Jersey City Gas Light Co.* vs. *Jersey City*, 16 Vroom, (45 N. J. Law), 480–482, (Nov. term, 1883.)

On error to the Court of Errors and Appeals, however, this highest Court of our State, reversed this judgment of the Supreme Court, and decided that the act of 1878 *merely substituted a new method* of taxing the corporation in the place of the method under the act of 1866, and that the exemption of the shareholders, *when the company was taxed*, was not repealed. The opinion is put expressly upon the ground that under any other construction of the acts *double taxation* will result. "Taxation of the *property as such* in the hands of the company, *and of the stock which represents it* in the hands of the stockholders." This opinion and judgment was unanimously concurred in. (See 17 Vroom, 46 N. J. Law, p. 194, March, 1884, opinion by Chancellor RUNYON, p. 196.)

By a subsequent law, March 14, 1879, (*Pamphlet Laws*, 1879, p. 348.) corporations organized or acting under the general corporation law of 1875, were taxed upon their capital stock at its actual value and accumulated surplus, as follows:

"A supplement to an act entitled 'An act concerning corporations,' approved April 7, 1875."

Sec. 1. (Provides that companies formed under the general manufacturing law of March 2, 1849, or its supplements, might, by filing certain certificates, come under the provisions of the general corporation law of 1875, and be free from the provisions of the law of 1849.)

"Sec. 2. *And be it enacted,* That all corporations, whether manufacturing corporations or otherwise, organized or acting under the provisions of this act, or the act to which this is a supplement, shall hereafter be taxed upon their capital stock at its actual value and accumulated surplus.

"Sec. 3. *And be it enacted,* That all acts or parts of acts inconsistent with the provisions of this act, are hereby repealed, and that this act shall go into effect immediately."

No decision has as yet been made upon the question, whether the shareholders in corporations, taxable under this law of March 14, 1879, are also entitled to the benefit of the exemption of the act of 1866, but assuming that they, equally with the shareholders of corporations taxed under the law of 1878, are so entitled, then, as the general result of the above laws, it appears that the persons who are entitled to the benefits of the exemption *in the 15th section of the act of 1886*, are the stockholders in corporations taxable under the laws of 1878 and 1879, stockholders in turnpike and stock insurance companies, and the depositors in savings banks.

By a later law of April 10, 1884, the so-called General Railroad Law (P. L. 1884, p. 142, &c.), both Railway and Canal Companies *and their stockholders* have been removed from the operation of the 15th section of the act of 1886, and of its exemption. As no complaint is made in the bill that the system of railroad taxation, under the law of 1884, or the exemption of shareholders under that act, creates any discrimination against National Bank shareholders, it will not be necessary to spread that cumbrous legislation upon the record, or to refer to its complicated provisions and the decisions of our courts construing the acts.

The corporations taxable under the law of 1879, upon their capital stock at its actual value and accumulated surplus, are those organized since 1875, under the general corporation law and its amendments, and include corporations for the following purposes: (See *Rev. of 1877*, p. 179, Sec. 10; amended by Act April 12, 1876, Pamp. Laws, p. 103, &c.; and by Act March 3, 1880,

P. L., p. 93, &c.) Manufacturing, mining, chemical, trading or agricultural business, agricultural fairs and exhibitions, transportation of goods and merchandise by land or water, inland navigation, building houses, vessels, wharves, docks or other mechanical business; reclaiming and improving lands, constructing water works, purchasing and selling manufactured articles, and rights to make and use; renting buildings and power, digging clay, &c., any mercantile business, or any lawful business or purpose whatever, *except* insurance, banking, savings bank or other *corporation intended to derive profit from the loan or use of money*, and railroads, turnpikes or canal companies.

The corporations taxable under the law of 1878, for their real and personal estate, the same as individuals, embrace all the other corporations of the State incorporated under laws prior to 1875, general or special, except railway, turnpike, insurance, canal or banking corporations, savings banks, cemeteries and charitable or educational institutions.

In addition to their liability to taxation for State, county, municipal and local purposes, equally with individuals, there is also (under the law of April 18, 1884, P. L. 232, &c.,) payable to the State by "every telegraph, telephone, cable or electric light company, every express company, not owned by a railroad company and otherwise taxed, every gas company, palace or parlor or sleeping car company, every oil or pipe line company, and every fire, life, marine or accident insurance company doing business in this State, except mutual fire insurance companies," an annual tax for the use of the State by way of a license for its corporate franchise. The tax is a certain per cent. on the gross receipts and dividends earned or declared by the corporations, the amount varying with the character of the corporations. The whole amount of this tax for the year 1884, was $75,968.15. (Report of Assessors for 1884, p. 93.)

By the same act of April 18, 1884, (*P. L.* 235, Sec. 4,) "all other corporations incorporated under the laws of this

State and not hereinbefore provided for, shall pay a yearly license fee or tax of one-tenth of one per centum on the amount of the capital stock of such corporation, *provided* this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or manufacturing or mining companies carrying on business in this State." The annual taxes or license fees under this section for the year 1884, amounted to $119,305.36. (See *Record*, pp. 43–62.)

The whole State tax upon franchises assessed against miscellaneous corporations for the year 1884, was thus, $195,273.51, (see report of assessors for 1884, p. 93,) which tax, of course, was additional to the tax upon their property or capital stock above referred to, and to that extent lightened the general burden of taxation upon the shareholders of National and State Banks, these institutions paying no franchise tax.

[Since the filing of the bill and by law of May 11, 1886, (*Laws of* 1886, p. 345,) it has been provided "that all the real and personal estate of every manufacturing company or corporation shall be taxed the same as the real and personal estate of an individual."]

THIRD POINT.

The general principle as to stock corporations is, that the taxation of the company upon its property or capital stock, is, so far as the stockholders are concerned, substantially the same as a tax upon the shares in the hands of the shareholders themselves.

This results necessarily from the essential character of a corporation, which is an aggregate of individual persons, having perpetual succession, formed for the purpose of owning and managing property. The method of conferring upon each individual member his rights in the property of the company, and of evidencing those rights, is the creation of a capital stock, which in its aggregate represents the value of property and franchises, and for which certificates are issued, and divided among the individuals, according to their respective interests. These three elements, viz., the property of the company, the capital stock in the aggregate, and the separate shares in the hands of the members, are, as declared by the courts, each separate and distinct entities, or rights, and therefore each is a separate and distinct subject for taxation as property. As to stock corporations in general, however, and as compared with individual ownership, the three elements together make up only the *one complete property*, or subject of valuation and taxation. Stock corporations in general have, in substance, only one subject of valuation for taxation beyond that of individuals, viz., the *franchise* of owning and managing property in the form of corporations, and this franchise is an additional property, or subject of taxation. It may be a work of supererogation to cite authorities for these principles, but, inasmuch as the contention of the plaintiffs in this case seems to us to be founded on a denial of this general principle, and on an attempt to substitute for this general rule, *an exception to the rule*, made with reference to corporations of a special character, we will refer to a few cases.

The clearest statement of this essential and substantial character of stock corporations in general with reference to taxation, is found in a late case of the United States Supreme Court, *Tennessee* vs. *Whitworth*, 117 United States 129, decided March 1, 1886, Chief Justice WAITE, p. 136, says: "In corporations four elements of taxable value are sometimes found—1. Franchises; 2. Capital stock in the hand of the corporation; 3. Corporate property; and 4. Shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is, no doubt, within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to *double taxation.* Double taxation, however, is never to be presumed. Justice requires that the burdens of government shall, as far as is practicable, be laid equally on all, *and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way,* when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do, it is because the legislature has unmistakably so enacted. All presumptions are against such an imposition."

In this case, also, Ch. J. WAITE said, p. 135, that a tax upon the capital of the corporation, and a tax upon the railroad and its appurtenances into which the capital stock was converted, was, so far as the corporation was concerned, double taxation. In this case, also, the Court held that the exemption of the capital stock of the company from taxation, exempted it from taxation, not only as against the company, but also in the hands of the stockholders. WAITE, *Ch. J.*, pp. 138 and 139, defines the *status* of the stockholders with reference to the "capital" and "capital stock" of the corporation, and says, p. 139: "The aggregate of the subscriptions make the aggregate of the stock. Each subscriber owns that part of the stock which his shares represented, and the aggregate of the shares represented the aggregate of the stock. It was evidently called the 'capital stock of the company,' because it was the stock which, when subscribed and paid for, furnished the corporation with the capital to build its road. *As capital* it belonged to the corporation, *but as stock* it belonged to the several holders of the shares into which it was divided. The charter *exempted the stock from taxation* clearly because the *property which represented* the stock had been put in its place as a taxable thing. The exemption is of the thing called the 'capital stock,' divided into shares. As the whole thing is exempt, so, necessarily, must be its several parts or shares."

In this case the Court *held,* that, under a statute providing that the capital stock of a railroad company should be forever exempt from taxation, the shares of the stock in the hands of the various holders were exempt from taxation.

This case, and its statement of the elements of taxable value, was expressly approved in a case decided at the present term, *New Orleans* vs. *Houston*, 119 U. S. 265, in which it was held that a tax, although assessed upon the *shares* of the shareholders, was substantially a tax upon the company, which was itself exempt from all taxation, except a special license fee, and the tax was set aside. (See pp. 278 and 279. Opinion of Justice MATTHEWS.)

In *Hepburn* vs. *School Directors*, 23 Wall. 480, (1874,) one of the questions involved was, whether the valuation of National Bank shares, for the purposes of taxation, at an amount above their par value, was a violation of the National Bank act, it being contended that the "moneyed capital" of the shareholder was the par value, as in cases of *money* put out at interest, but the Court say (Ch. Just. WAITE, p. 484), "The money invested in a bank is not money put out at interest. The money of the bank is so put out *and the share of the shareholder represents his proportion of that money.* What the amount of this share is, must, in some form, be ascertained in order to determine its taxable value. * * * * It is not the amount of money invested which is wanted for taxation, but the amount of *moneyed capital which the investment represents* for the time being."

In reference to the *substantial* identity, so far as the shareholders are concerned, of a tax upon the company with a tax upon the shareholders, the earliest case in this Court is *Gordon* vs. *Appeal Tax Court*, 3 How. 133 (1844). In that case the legislature of Maryland had, by contracts in the charters of certain banks, agreed "not to impose any further tax or burden upon *them* (*i. e.*, the banks) during the continuance of their charters." The State afterwards taxed the *shares in the hands of the holders*, and the highest court of Maryland sustained the tax against a stockholder who contested it. On his appeal to the United States Supreme Court, the tax on the shares of the shareholders was held illegal, as being a vioalation of the contract *not to further tax the company.*

In the *State* vs. *Brannin*, 3 Zab. 484, (N. J. Supreme Court, 1852,) a stockholder in the Camden and Amboy Railroad Company contested a tax which was levied *against him* on his shares of stock, upon the ground that the charter of the company levied a certain tax to be paid by the company to the State, and contained the contract "that no other tax or impost shall be levied or assessed upon *the said company.*" Chief Justice **Green** (p. 493,) was inclined to the opinion that the property of the stockholder was not within the terms of the exemption, on the grounds, that the exemption was strictly limited to the body corporate; that the property of the individual shareholder was not identical with the property of the corporation, and not within the terms of the exception; that the contract being a public grant should be taken most strongly against the grantee, especially as the construction limits the taxing power of the State. He held, however, that the question had been settled in favor of the exemption of the shareholder by the *Gordon* case, and set aside the tax.

In reference to the substantial identity (so far as the company is concerned) of a tax upon the capital stock and a tax upon the property, see *Bank of Commerce* vs. *N. Y. City*, 2 Black. 620, (1862,) where it was held, that a tax upon the capital stock of a bank, according to its valuation, is tax upon the property which constitutes the capital, and a deduction for United States bonds and stocks, non-taxable property, must be allowed, and a tax under the New York law, without allowing such deduction, was set aside.

The Court, in this case, expressed the further opinion that a tax on the *nominal capital,* without regard to the nature or value *of the property composing it,* would be a valid franchise tax, and not a burden on the property itself, and the State of New York thereupon substituted for the previous law a tax upon the banks "on a valuation equal to the amount of their capital stock paid or secured to be paid in and surplus." This latter tax was held by the Court of Appeals of New York not to be a tax upon the stock but upon the franchise. On appeal again to the United States Supreme Court, *Bank Tax Cases*, 2 Wall. 200, (1864,) that Court held that this second tax was a *tax on the property* of the bank in which the capital was converted, and the bank was entitled to the same deduction as to non-taxable United States securities.

Nelson, *J.*, p. 208, says: "When the capital of the banks *is required or authorized by the law* to be invested in stocks, and, among others, in United States stock, under their charters or articles of association, and this capital thus invested is made the basis of taxation of the institutions, there is great difficulty in saying that it is not the stock thus constituting the *corpus* or body of the capital that is taxed. It is not easy to separate the property in which the capital is invested from the capital itself. It *requires some refinement* to separate the two thus intimately blended together."

In *Railroad Co.* vs. *Gaines*, 97 U. S. 697, (1878,) this substantial identity of the property and capital stock is also considered, and Waite, *Ch. J.*, p. 707, says: "In general, an exemption of capital stock, without more, may, with great propriety, be considered, under ordinary circumstances, as exempting that which, in the legitimate operations of the corporation, comes to represent the capital." Taken in connection with the decision in *Tennessee* vs. *Whitworth*, *supra*, in which the same charters were construed, that the perpetual exemption of capital stock extends also to the shares in the hands of shareholders, the above cases seem to establish beyond question the *general rule*, that for the purpose of comparing individual with corporate taxation, a tax upon either the property or capital of the company is substantially a tax on the shares. That this is the settled view of the judges of the highest court in New Jersey, and of every one of its distinguished members, is shown in the case of the *Jersey City Gas Light Co.* vs. *Jersey City*, *supra*, (second point.)

This is also the principle upon which the system of taxing corporations is based in nearly all the States, as will be seen by a reference to the statutes of the following States, where the tax is laid upon corporate property or stock, and the shares of stock in the hands of the holder are exempted: *Ala.* Code, Pt. I. Tit. VIII. ch. 2, Sec. 358; *Ark.* R. S. Sec. 5068; *Cal.* Laws 1881, ch. 53, Sec. 2; *Fla.* Dig. ch. 174, Sec. 23; *Ill.* R. S. 1880, p. 1224, Sec. 5; *Ind.* R. S. ch. 98, Sec. 6308; *Iowa*, Gen. Stats. Tit. VI. ch. 1, Sec. 816; *Kan.* Laws, 1876, ch. 107, Sec. 12; *Ky.* Gen. Laws, ch. 92, Art I., Sec. 4; *Me.* ch. 47, Laws of 1878; *Mass.* Pub. Stats. 1882, ch. 12, Sec. 4; *Mich.* Laws of 1882, No. 9, Sec. 2; *Minn.* Gen. Stats. ch. 11, Sec. 7; *N. J.* Rev. p. 1150, Sec. 74; *N. Y.* Laws of 1845, ch. 195; *Ohio* R. S. Sec. 2746; *Ore.* Gen. Laws 1874, ch. 57, Tit. I. Sec. 14; *R. I.* Pub. Stats. 1882, ch. 42, Sec. 10; *N. C.* Rev. ch. 102, Sec. 9; *S. C.* Gen. Stats. ch. XI., Pt. I., Sec. 154; *Wis.* R. S. Tit. XIII., ch. 48, Sec. 1038; *W. Va.* Laws of 1881, ch. XII., Sec. 51; *Vt.* R. S. Tit. 9, ch. 22, Sec. 270. No doubt the States have adopted this policy in their tax laws because the taxes imposed upon corporations is collected with more ease and certainty than when levied upon the individual, but whatever the reason, the fact is as we have stated. If, therefore, this Court should declare that the position now taken by these complainants is correct, either the entire policy of the States in regard to the taxation of corporate property must be changed, or else National Bank shares must be omitted entirely from the lists of taxable property.

Aside from the difficulty which a change of policy so radical would involve, a difficulty which any one familiar with legislation on the subject of taxation can appreciate, it would further be necessary for the States in order to meet the extraordinary demand now made by the complainants to tax every species of representative property which individuals hold. No material part could be omitted, although it might require the States to do that which both the Federal and State courts have discouraged, and held to be so unjust that it would be permitted only where it could not by judicicial construction be prevented—impose a double burden upon property.

Fourth Point.

An exception to the general rule, that taxation on the capital stock or property, is substantially equivalent to taxation on the shares, exists in respect to those stock corporations, which, as a substantial part of the business for which they are formed, are required to invest their capital in non-taxable securities; but the general rule, and not this exception, is the proper standard of comparison in the present case.

As to this special class of corporations, the Banking Associations, National and State, are the most striking illustrations, and the two cases above cited, *Bank of Commerce* vs. *New York City*, 2 Black, 620, and *Bank Tax Cases*, 2 Wall. 200, recognize the inequality in regard to such corporations; and if, in the present case, the State of New Jersey had taxed either the National or State banks, on their capital or property, it would have been a tax substantially different from a tax on the shares, *independent of any restrictions* or provisions in the present National Banking law. But the State taxes its banks on their *shares*, as the National Banking laws require the National Banks to be taxed, and the fallacy of the complainant's claim, in relation to the substantial inequality of taxation of National Bank shareholders as compared with the shareholders in corporations of a different character, is, we insist, clearly apparent.

They insist, in this case, on determining the question of the substantial equality of the different forms of taxation, by applying to all taxable stock corporations, of whatever character, the rule that governs only the limited and special class, whose purpose is the investment in non-taxable securities. Now, as their only complaint of inequality is in reference to shareholders in those corporations, (manufacturing, mining or what not,) *which come under the general rule* above stated and not under the exception, it is apparent, as I submit, that in comparing the status of National Bank shareholders as to taxation with that of shareholders in corporations formed for general purposes, the general rule above stated is applicable, and not the exception. If there is any substantial inequality between the taxation of shareholders in National Banks and the shareholders in other corporations, it arises not from the fact that the latter companies are taxed instead of their shareholders, but from the fact that the National Bank act requires the shares in National Banks to be taxed, instead of the capital, for the express purpose of preventing the banks from having the benefit which would otherwise result from their holding as part of their capital, the *non-taxable securities* which the law *requires* them to purchase as part of the capital. Sec. 5159 requires United States bonds to an amount not less than one-third of the capital stock paid in, to be purchased and deposited with the Treasurer of the United States before commencing business. This discrimination by the National government is part of the consideration for the valuable privileges conferred.

Taxation by the State of New Jersey of its general corporations through their shareholders, instead of their capital stock or property, would not in any substantial degree relieve the shareholders of National banks from any burden. As to the great mass of the corporations, no part of their capital is required to be invested in non-taxable securities, and being formed for other purposes than the investment of money, the portion of their capital actually invested in such securities must be very inconsiderable; in no event probably extending beyond a portion of their surplus. No effort has been made by the complainants to prove the extent of the exemption which might thus result from the present system, and there is no basis upon which this Court can adjudge that a substantial inequality has, in fact, resulted from the system of taxing the property in lieu of the shares. On the other hand, it may with certainty be asserted that taxation *of the company*, in practice, is a substantial advantage over taxation of the shares, to the benefit of the complainants and all other taxpayers. This results from the practical effect of the laws: (1) in reaching the value of the *whole* property of the company, which it would be impossible to secure by trying to reach *every* stockholder; (2) there are no deductions for debts of the company, as there would be in cases of individuals; so that, if a balance were to be struck as to the *substantial benefits* the complainants derive from the two different methods, the credit would fall on the side of the present system. The real trouble with the National Banks is, that they want too much, and that they are now, as they have been ever since they were created, trying to escape from the burden which the Government placed on them at their creation, viz., that of paying tax on that portion of their capital which is invested in United States bonds. The Government did this by expressly requiring their *shares* to be taxed, as distinguished from their capital as property.

FIFTH POINT.

As to the construction of the National Bank Act, (Sec. 5219,) as applied to the foregoing tax laws, we submit, that this act only requires that the moneyed capital, in the hands of individual shareholders, represented by the shares, shall be substantially taxed, and that it does not, in addition, require that the taxation itself must be made directly against shareholders.

The section is as follows:

"(Sect. 5219.) Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of National banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any National banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

Upon this point we submit that, if the "moneyed capital in the hands of the individual citizens" is substantially taxed by a taxation *of the company* upon its property, or stock, the object of the act is satisfied, and its terms do not, by any fair construction require that the taxation shall be made *upon the holder of the property.*

Taxation under the act may, in some instances, be made against one person for the moneyed capital in the hands of another, and in such cases the failure to tax the latter, also, is no violation of the restriction.

"Moneyed capital," in the hands of a citizen, may evidently be of such a character that it can be substantially taxed in the hands of another than the owner of the capital. We instance the large class of trust estates in which the real owners are the owners of the *equitable rights* in the property, and their rights are, or may be, as truly "moneyed capital" as any other property.

This "moneyed capital, in the hands of the equitable owner," is *usually taxed in the hands of another*, by taxing the legal owner of the estate, yet there can be no question that the tax is *substantially paid* by the equitable owner, though assessed against another, and taxation of both estates for the purpose of securing equality of taxation between them and another who is owner of property, which is not divisible for purposes of taxation, would be manifestly unjust.

We submit that this illustration is precisely applicable to the present case. So far as relates to *his interest in the property* of the company, the shareholder has only an equitable interest, and by that, we mean, equitable even to the extent of being an interest enforceable only in the court of equity. The sole, *substantial* property, (or moneyed capital,) he has by reason of the ownership of his shares, is a right to a share in the profits of the company, while it runs, and a share of its property or assets, on dissolution. Both of these rights are strictly *equitable* interests or rights in the *property of the company*, and he must seek their protection in a court of equity. For many purposes the share of stock gives some legal rights and interest, but so far as the substantial character of his investment, "his moneyed capital," is concerned, his rights are equitable.

Under these circumstances, the taxation *of the property* in the hands *of the company*, is substantially a taxation of the moneyed capital in his hands, *represented by the share*, and the terms, as well as the spirit, of the act are satisfied. The fallacy of the complainant's position in relation to the construction of this restrictive clause, is that it goes *beyond* the terms of the act in requiring the *taxation* to be *against the citizen.*

The act only requires that the *capital in his hands* shall be taxed, not that *he alone* shall be taxed for it, and if the capital *in his hands* is taxed, and properly taxed, to his representative, the substantial object of the act is accomplished, and there is no discrimination against the National Bank shareholders.

The construction of this restrictive clause has always been made, with the single and emphatic purpose of securing its substantial object, that of preventing the States from making an unfair and unjust discrimination against National Banks.

We refer the Court to the following cases in which the questions of substantial exemptions and discriminations under the act have been treated:

In *Hepburn* vs. *School Directors*, 23 Wall. 480, (1874.) An act of the legislature of Pennsylvania directed that shares of National Banks should be taxed for State purposes at a certain rate, (three mills,) upon the *assessed value* of the shares, and for county, school and local purposes, at the same rate imposed on other moneyed capital, in the hands of individual citizens of the State. The owner of shares, in a National Bank, was taxed on a valuation of "$150 per share, of the *par* value of $100." The shareholders contended that the "moneyed capital" referred to in the act, signified *money put out at interest*. As this was taxed only at par value, the shares could not be taxed at more than the par value. The United States Supreme Court *held*, (1), that shares in National Banks were certainly "moneyed capital," and that other investments in stock and securities might be included in that term; (2), that the share of a shareholder in a National Bank *represents* his share or proportion of the money of the bank, and "the taxation against a shareholder is not to be the amount of money invested in the share, but the *amount of moneyed capital which the investment represents* *for the time being.* (The share is considered as representing a portion of *the moneyed capital.*)

(3.) That the exemption of mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real estate from taxation, except for State purposes, did not invalidate the tax, because the exemption was partial only, *and was evidently intended to prevent a double burden by the taxation, both of property and debts secured upon it.*

In *Boyer* vs. *Boyer*, 113 U. S. 689, (1880,) the history of the acts relating to the taxation of National Banks, and the previous decisions of the Court under them, were shown by Mr. Justice HARLAN, delivering the opinion of the Court, and the general result of the decisions stated. He says, p. 695: "These decisions show that, in whatever form the question has arisen, this Court has kept steadily in view the intention of Congress, not to permit any substantial discrimination in favor of moneyed capital in the hands of individual citizens, against capital invested in the shares of National Banks." Applying this principle, he further says, (p. 699,) that a very large amount of property has by the statutes of Pennsylvania been relieved from county taxation, while National Bank shares are subject to this taxation; and that, as to the value of this exempted property, the statements of the bill, being admitted by demurrer, show that the property valued at over six hundred millions of dollars, were exempted from county taxation.

The exemption in this case was absolute, this property not being taxed for county purposes, either directly or indirectly, and Justice HARLAN says, p. 701: "The exemptions in favor of other moneyed capital appear to be of such a substantial character in amount as to take the present case out of the operation of the rule that it is not absolute equality that is contemplated by the act of Congress; a rule that rests upon the ground that exact uniformity or equality of taxation cannot in the nature of things be expected or attained under any system. But as substantial equality is attainable, and is required by the supreme law of the land, in respect of State taxation of National Bank shares, when the inequality is so palpable as to show that the discrimination against capital invested in such shares is serious, the courts have no discretion but to interfere." And again, p. 702: "Capital invested in National Bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by State authority, as the State establishes for other moneyed capital in the hands of individual citizens, however invested, whether in State Bank shares or otherwise. As the act of Congress does not fix a definite limit as to percentage of value beyond which the States may not tax National Bank shares, cases will arise in which it will be difficult to determine whether the exemption of a particular part of moneyed capital in individual hands is so serious or material as to infringe the rule of substantial equality."

All the cases, however, agree that it was not intended to compel the States to adopt any particular method of taxation, nor to interfere with the discretionary policy of the States in regard to exemptions, so long as such policy did not show an intention to thwart the design Congress evidently had in view, and make the burden unjust, as compared with other capital of the same kind similarly held. The States were not called upon to tax property which they have contracted not to tax. They could still foster education, promote industry and sustain benevolent, religious and charitable institutions, by exempting them from the general burden. They were under no obligation to remodel their taxing systems so that equality in taxation should be secured. The fact that equality or perfection in tax laws is unattainable was fully recognized; no attempt before has been made to secure for this statute the narrow, artificial, technical construction now sought.

This construction of the statute is adopted in—

McMahon vs. *Palmer*, 4 Eastern Rep. 907.

N. Y. Court of Appeals, 1886.

Mercantile Bank vs. *New York*, Opinion by Judge Wallace.

Nothing has been further from the intention of Congress and of the Supreme Court than the purpose of controlling the States in the form and methods of reaching their taxable property, whether moneyed capital or other. Nor will the courts in the present case be swift to add to the difficulties and embarrassments, which must necessarily surround the question of securing taxation of corporations, by the entire overthrow of the system which has been the outgrowth of half a century of experience. This system is *not*, in fact, substantially inequitable to the complainants, and we submit that the Court should not aid the complainants in escaping their share of the burdens of taxation by adopting their "nice and critical" construction of the act, which would seek to import into it a standard of comparison which Congress never intended to make, viz., the *taxation in the hands* of the shareholder.

SIXTH POINT.

As to the tax upon Savings Banks, and the exemption of the depositors from taxation.

The savings banks of New Jersey, whether created by special charter or under general laws, have no capital stock, and as to them and their depositors, the following provision in the 15th section of the act of April 11, 1866, applies, viz.: "And such corporations as have no capital stock, * * * shall be assessed for the full amount of their property and valuable assets, without any deduction for debts and liabilities; but depositors in savings banks, taxed by virtue of this section, shall be exempted from taxation on their personal estate to the amount of their deposits." * * *

We must read this portion of the fifteenth section in the light of the fundamental principle on which the whole act is based, as declared in Sec. 2, viz.: "That all real and personal estate within this State, whether owned by individuals or corporations, shall be liable to taxation, at the full and exact value thereof."

Thus read, it is apparent that the legislature of the State having taxed corporations with corporate stock upon the stock paid in and surplus, taxed those without stock on the property and assets, as the equivalent of capital stock, and that they considered the taxation of the whole property in the hands of the company as equivalent to taxation of all the individual interests in the property; and that the exemption of the depositors (like the exemption of shareholders in stock companies) was made, not with the idea of discriminating in favor of the depositors, but for the purpose of not discriminating against them.

And if the system of exempting depositors and shareholders is a substantial discrimination in their favor, this has resulted not from any intention of the legislature, but is the unanticipated consequence of the method of taxation adopted. As to stock corporations in general, we have attempted to show that this insistment is unfounded, and as to savings banks, which may be claimed to come under the exception to the general rule, we submit, that although they may, under the law, be authorized to deduct non-taxable securities from their property to be assessed, yet this fact does not, in the present case, entitle the complainants to be released from taxation, for the reason that this method of taxing has not resulted in increasing the rate of taxation upon the complainants or discriminating against them, and cannot so result. This will appear, we think, from the consideration of the following facts which appear in the proofs, as affected by other provisions of the tax laws of New Jersey.

Taxation against the savings banks *necessarily* secures to the complainants the following substantial advantages —over taxation against individual depositors:

(1.) It reaches the interest of all depositors, not only the residents, but also, *non-residents of the State.* (The interest of the latter could not be reached in New Jersey.) This results, not only from the general principles of taxation, but also from the decisions of the Courts of New Jersey in *State* vs. *Thomas*, 2 Dutch. 181, (N. J. Supr. Ct. 1857,) holding that even non-resident shareholders in New Jersey stock companies could not be taxed, and of the Supreme Court of United States in *State Tax on Foreign held Bonds*, 15 Wall. 300, (1872,) holding that a bond of railroad companies held by non-residents is not within the taxing power of the State.

(2.) It gives the complainants, who are taxpayers in Newark, the benefit of taxing in Newark the interest of *all the depositors* in Newark savings banks, whether resident in Newark or resident elsewhere, either within or without the State. (Under the decision in the *North Ward Bank Case, supra*, taxation against individuals must be at their place of residence in New Jersey, in order that they may have the benefit of deduction for debts.)

(3.) It secures these benefits without any deduction for the individual debts of depositors.

(4.) The sum total of the tax which could, with any reasonable certainty, be either levied or collected against individual depositors, *under any form of proceeding*, must necessarily be small.

This results necessarily from the character of the depositors, and the amount of their respective deposits, being less than $300, (see *Record*, p. 75, total deposits about twenty-four millions, total depositors, eighty-seven thousand three hundred and fifty-six.) Held by the individual in small sums, $50, $100, $200, $300, it is probable that they would escape taxation altogether, for it is not probable that the most efficient tax gatherer would have been able to discover the "stocking legs" in which it was concealed, while it accumulated. Given to the savings bank, the depositor became the creditor, perhaps, or the beneficiary, and his money went into the general fund. On this fund our State levied a tax, at the same rate as upon other property, against the bank. They are required to pay taxes upon *the full amount of their property and valuable assets, without any deduction for debts or liabilities.*

In fact, then, while in the hands of the depositor, it was subject to deduction for debts; deposited in the bank the debt of the institution cannot be deducted from the gross assets. It may be said, however, that the savings banks may invest this money in non-taxable securities, United States bonds, and that these would be deducted. True, but so could the depositors, and, therefore, nothing would be gained, and to this objection we answer further:

(1.) That there is no proof that, *on the day upon which the assessments are made,* any of the savings banks had any United States bonds among their assets. The assessments in the city of Newark are made upon property held on the first Wednesday of April in each year, (act February 25, 1867; *Pamph. Laws* 1867, p. 84.) and in the other parts of the State on the property held on the *twentieth day of May.* (*Rev. of 1877,* p. 1152, Sec. 6, and p. 1140, Sec. 1.) The only proof offered is the statement of assets of the savings banks on the *31st of December,* 1884. The Court will not, in order to assist complainant to escape taxation, make any *presumptions* as to the character of the assets on the day when the assessment is made.

(2.) Taking the statement of assets in December, 1884, to be sufficient proof as to the character of the assets in April or May, 1885, this shows that over $\frac{3}{5}$ of the whole amount of property was liable to taxation; and we submit that no such proportion could ever have been secured by individual taxation.

(3.) The depositor has the same right of deducting United States bonds, on his individual assessment, and surely this is not, as against National Bank shareholders, a discrimination in favor of his moneyed capital, taxed in his hands.

Balancing the advantages and disadvantages, and keeping in view, as the Court well may, the controlling benevolent and charitable purposes of the State in founding these institutions, the Court, we submit, should decline to consider the failure to tax savings bank depositors, as any real or substantial ground for relieving the National Bank shareholders from taxation.

Seventh Point.

The proofs of the Complainants do not sustain the allegations of the bill as to the value and amount of the property to be exempt from taxation.

The allegations of the bill are—(*Record*, p. 5.)

"(*a.*) That by Section 15 of an act, approved April 11, 1866, entitled 'A further supplement to an act entitled "An act concerning taxes," approved April 14, 1846,' it is provided that the persons holding the capital stock of the corporations therein mentioned shall not be assessed upon the capital stock so held, the said corporations being 'all private corporations of this State, except banking institutions, and except those which by virtue of any contract in their charters or other contracts with this State are expressly exempted from taxation, and except mutual life insurance companies specially taxed.'

"(*b.*) That during the said period between the first Wednesday of May and the second Monday in August, in the year 1885, the aggregate taxable value of the shares of stock in the hands of the individual citizens of said State of the said private corporations of this State (not including banking institutions, nor those corporations which, by virtue of any contract in their charters or other contracts with this State, are expressly exempt from taxation, and not including mutual life insurance companies specially taxed), which shares of stock were, by the laws of New Jersey, exempt from "all taxation in the hands of the persons holding the same, "amounted to a vast sum, to wit, to at least the sum "of $301,485,000.

"(*c*.) That by Section 15 of the act of April 11th, 1866, "aforesaid, it is provided that depositors in savings "banks taxed by virtue of the said section should be "exempt from taxation on their personal estate to the "amount of their deposits.

"(*d*.) That during the said period the aggregate "taxable value of the deposits in the said savings banks "made by the individual citizens of this State, which "deposits were exempted from taxation in the hands of "the depositors, amounted to the sum of $24,017,916.99."

These are the allegations upon which the supposed equity of the bill rests, and they should be supported by competent and satisfactory proofs.

Are the proofs submitted sufficient?

They consist—

1st. Of an extract or schedule of the State Board of Assessors for 1884, showing the aggregate capital of certain miscellaneous corporations, upon which a license or franchise tax of one-tenth of one per cent. was imposed in 1884 by the State. Exhibit 1, *Record*, 41 to 62.

2d. Of a similar schedule taken from the same report, showing the aggregate capital and bonded debt of certain railroad and canal companies, upon which, it appears, a State tax was imposed in 1884. Exhibit 2, *Record*, pages 63 to 68.

3d. Extracts from the report of the Secretary of State, acting as Commissioner of Insurance, for 1884, showing the amount of the capital stock, assets and liabilities of certain fire and life insurance companies, doing business in New Jersey during that year. Exhibits 3 and 4, *Record*, pages 69 to 72.

4th. An extract from the report of the same officer for 1885, purporting to give a summary of the annual statements made by the banks and savings institutions of this

State for that year, showing their deposits, assets and liabilities. Exhibit 5, *Record*, pages 73 to 76.

5th. Two schedules (Exhibits 9 and 10,) which purport to give the names and authorized capital of certain corporations, for the organization of which special charters have been granted by the legislature of the State of New Jersey, or certificates have been filed in the clerk's office of some of the counties in that State; the certificates, it appears, were examined by a Mr. Wood, who examined the records in certain county offices and made the list. Exhibit No. 9.

Mr. Jenkins made up the second list, Exhibit No. 10. It was made from an examination of the Pamphlet Laws of the State, (using Hood's Index as a guide,) to 1871, and the indices of those laws since 1871. From these he made a schedule of all the special charters granted by the State, and the amount of capital authorized in each. From these special charters and the certificates found by Mr. Wood, Mr. Jenkins made a new list by combining the two so made, first striking out such as he was told, by some persons he spoke to on that subject, had ceased to exist. Exhibit No. 10 is the result, (*Record*, page 34, lines 10 to 30.)

This comprises the entire proof made by the complainant to sustain these important and essential allegations.

These reports show this only: that in 1884, the year before this tax was levied, certain corporations, some organized under the laws of New Jersey, some under the laws of other States, were transacting business in that State, or supposed to be, having an authorized capital, as stated, and were assessed by the State Board of Assessors. Whether, in fact, these corporations did exist, did pay the assessments, where and by whom the shares of stock issued by them were held, or whether in 1885, when this tax was levied, a single share of this stock was in the hands of the individual taxpayers of New Jersey, does not appear.

It will appear, also, that included in these schedules is the capital stock of all the railroad and canal companies of the State, although no complaint is made in the bill that their stock is not properly taxed, or that any exemption is made by our law in favor of their shares.

As to the corporations mentioned in Exhibits 9 and 10, it does not appear that any companies were, in fact, organized under these certificates, or special acts, that any stock was ever issued, or if any, what its value was, or where and by whom it was held. It manifestly includes the authorized capital of all the "bubble companies" formed or projected during a period of inflation and speculation unprecedented in the history of this country.

Such are the proofs offered upon which this Court is asked to adjudge that between the first Wednesday in May and the second Monday in August, 1885, the individual taxpayers of New Jersey held shares of stock, otherwise taxable, which were by the operation of the provisions of the 15th section of the tax act exempted from taxation to the aggregate value of $300,000,000.

As to the amount of money on deposit in the savings banks of the State at the date when this levy was made it may be admitted that the allegation of the bill is substantially correct; we do not admit, however, that this money was by law exempt from taxation. This question is fully considered in our brief elsewhere.

EIGHTH POINT.

Even if complainant is entitled to relief as to the tax upon the shares of non-resident shareholders, no injunction should issue, at the suit of the bank, to restrain the collection of the taxes assessed upon the shares of resident shareholders.

The principle upon which the bank has been allowed to file a bill to prevent the collection of a tax wrongfully assessed by the State against the shares of its stockholders, is found, we think, to exist alone in the peculiar circumstances existing in those cases wherein this relief has been granted. In those cases, the bank was either required to pay the tax assessed against the shares, or had a duty imposed upon it by the law of the State with relation to the payment, so that the bank stood in the character of a trustee for its stockholders, and to protect the bank against a multiplicity of suits, it has been permitted to enjoin the collection of the tax so assessed.

Shareholders wrongfully assessed have a perfect remedy at law, or, if not, could as individuals invoke the aid of a court of equity, but how can the bank in this case interfere between the taxpayer and the collecting officer? It may be said, perhaps, that the bank is to some degree affected by the assessment made against its shares in the hands of the holder; that it may affect the value of its shares, but if this be so, it would give the bank no right to institute a suit to prevent the stockholder from paying his assessment, or a tax collector from receiving it. To hold that any corporation whose shares are assessed wrongfully in the hands of their shareholders, may by proceedings in equity enjoin the collection of assessments made against their shareholders, would, we think, be establishing a precedent which would be fraught with most disastrous consequences.

The payment and collection of taxes are matters so essential to the welfare, nay, to the very existence of our State and municipal government, that the Court will not be swift to interfere, and certainly will not enlarge its jurisdiction to enable a party without interest to maintain such a suit in the assumed character of guardian or trustee.

In the case of the *Union Pacific Railroad* vs. *Cheyenne*, 113 U. S. 516, 525, Mr. Justice **Bradley**, delivering the opinion of this Court, said, "It cannot be denied that bills " in equity to restrain the collection of taxes illegally imposed have frequently been sustained. But it is well " settled that there ought to be some equitable ground for " relief, beside the mere illegality of the tax; for it must " be presumed that the law furnishes a remedy for illegal " taxation." He adopts the statement made by Judge **Cooley** on this subject, "*That to entitle a party to relief* " *in equity against an illegal tax, he must by his bill bring* " *his case under some acknowledged head of equitable jurisdiction.*" He says, p. 526, "in *Cummings* vs. *National* " *Bank*, where the bank filed a bill to prevent the collection of a tax wrongfully assessed by the State against " the shares of its stockholders, *and which the bank was* " *required to pay, we held that the fiduciary character in* " *which the bank stood to its stockholders entitled it to come* " *into a court of equity for relief.*"

The case of *Evansville* vs. *Britton*, 105 U. S. 322, is put upon the same ground The relief there given was for a like reason. In the dissenting opinion of Mr. Justice **Bradley**, he states, p. 326, that by the law of Indiana the bank was required to pay the taxes. The Indiana statute contained the same infirmity as the New Jersey statute of 1866, and produced the same result; it prevented the shareholder from making a deduction of indebtedness, and because of this discrimination the assessment was declared to be illegal. The bank was permitted to bring a suit for its shareholders, because it was obliged by the act to pay the tax. It held the position of a stakeholder or trustee; and to prevent injury to it, and a multiplicity of suits, the Court gave it relief.

The case of *Cummings* vs. *National Bank*, is the first case in which a National Bank was permitted to file a bill and maintain a suit of this character. This case was determined at the October term, 1879, (101 U. S. 153.) This case arose under the laws of Ohio. The Merchants' National Bank of Toledo filed its bill to enjoin the treasurer of Lucas county from collecting taxes assessed against its shares. The cause of complaint was that there had been a systematic and intentional undervaluation of all property except these shares, by taxing the officers, and by reason of this unjust discrimination the provisions of the National Currency act, limiting the rate, had been violated.

The Court held that so much of the assessment as represented the excess in violation was void.

The right of the bank to maintain the suit was challenged.

Mr. Justice MILLER, in delivering the opinion of the Court, said, "The Ohio statute, by the remedies it pro-"vides, places the bank in a condition where it must pay "the tax, or encounter other evils of a character which "create a right to avoid them, by instituting legal pro-"ceedings to ascertain the extent of its responsibility, "before it does the acts demanded by the statute." (The bank was authorized to pay the tax and deduct from the dividends, and was forbidden to pay the dividends or permit transfer of stock so long as the tax was unpaid.) "It is next suggested that since there is a "plain, adequate and complete remedy by paying the "money under protest, and suing at law to recover it "back, there can be no equitable jurisdiction of the case. "The reply to that is that the bank is not in a condi-"tion where the remedy is adequate. In paying the "money it is acting in a fiduciary capacity as the agent "of the stockholders—an agency created by the statute "of the State. If it pays an unlawful tax assessed "against its stockholders, they may resist the right of the "bank to collect it from them. The bank, as a corpora-"tion, is not liable for the tax, and occupies the position

" of stakeholder, on whom the cost and trouble of the " litigation should not fail. If it pays, it may be sub- " jected to a separate suit by each shareholder. If it re- " fuses, it must either withhold dividends, and subject " itself to litigation by doing so, or refuse to obey the " laws, and subject itself to suit by the State. It holds " a trust relation which authorizes a court of equity to " see that it is protected in the exercise of the duties " appertaining to it. To prevent multiplicity of suits, " equity may interfere."

The Court in that case further held, " That when a rule " or system of valuation is adopted by those whose duty " it is to make the assessment, which is designed to " operate unequally, and to violate a fundamental prin- " ciple of the State constitution, and when this rule is " applied not solely to one individual, but to a large " class of individuals or corporations, that equity may " properly interfere to restrain the operation of this un- " constitutional exercise of power." No occasion for equitable interposition on either ground appears in this case.

The case of *Pelton* vs. *National Bank*, 101 U. S. 143, came from the same State, depended on the same facts, and was held to be governed by the case of *Cummings* vs. *National Bank*. These two cases were heard at the same time.

The only remaining authority on this question which needs to be considered is the case of *Hills* vs. *Exchange Bank*, decided in October, 1881. (105 U. S. 319.)

In this case Mr. Justice Miller says, " That among " the questions raised or suggested was the question of " the right of the bank to maintain a suit on behalf of " its stockholders," and he says, " this was established " by the cases of *Cummings* vs. *National Bank*, and *Pelton* " vs. *National Bank*." The particular features of the law of New York, under which the assessment complained of was made, are not disclosed in the opinion, but by a reference to the case of *Supervisors* vs. *Stanley*, (heard at the same term, reported in the same volume, page 305.)

it will be seen that the assessment was made under the act of 1866, the first section of which is given in opinion in that case, (p. 109). The other provisions of the act show very clearly why the case of *Hills* vs. *Exchange Bank* on this point was controlled by the case referred to.

The laws of New York for 1866, (see *Rev. Statute*, N. Y. Vol. , p. ,) in relation to the collection of taxes assessed against the shares of National and State Banks, among other things provided as follows:

"There shall be kept at all times in the office where
" the business of such bank or banking association organ-
" ized under the authority of this State or of the United
" States shall be transacted, a full and correct list of the
" names and residences of all the stockholders therein
" and of the number of shares held by each, and such
" list shall be subject to the inspection of the officers
" authorized to assess taxes during the business hours
" of each day in which business may be legally tran-
" sacted."

" When the owner of stock of any bank or banking
" association, organized under the laws of this State or
" of the United States, shall not reside in the same place
" where the bank or banking association is located, the
" collector and county treasurer shall respectively have
" the same powers as to collecting the tax to be assessed
" by this act, as they have by statute when the person
" assessed has removed from the ward or county in which
" the assessment was made, and the county treasurer, re-
" ceiver of taxes, or other officer authorized to receive
" said tax from the collector, may all, or either of them,
" have a suit to collect the tax from the avails of the sales
" of his shares of stock, *and the tax on the share or shares*
" *of said stock shall be and remain a lien thereon till the*
" *payment of said tax.*"

" *For the purpose of collecting such taxes, and in addi-*
" *tion to any other law of this State not in conflict with*
" *the constitution of the United States relative to the impo-*
" *sition of taxes, it shall be the duty of every such bank or*

"*banking association, and the managing officer or officers*
"*thereof, to retain so much of any dividend or dividends*
"*belonging to such stockholder as shall be necessary to pay*
"*any tax assessed in pursuance of this act, until it shall*
"*be made to appear to such officer that such taxes have*
"*been paid.*"

Here the State statute made the tax a lien upon the stock, it compelled the bank officers to furnish the taxing officers with a list of its shareholders, *and further imposed the duty on the bank of paying the tax from dividends from time to time declared.* It came, therefore, directly within the principle laid down in *Cummings* vs. *National Bank.*

The bill of complaint (*Record,* p. 3,) shows that the assessment complained of was made against 206 persons. Of these fifty, owning 1506, were non-residents, while 156, owning 5716 shares, resided within the taxing district. As to the latter, we submit that the bank is in no position to complain, and that no injunction should issue in this suit to restrain the collection of the taxes against the shares.

The general principle as to interference by the Court in such cases is also stated in *Roberts* vs. *Bozon,* 3 L. J. Ch. 113, where it was held "that the Court will not interfere on behalf of a plaintiff, who claims relief, not through direct equities of his own, but, indirectly, through the equities of other parties, on which equities those parties themselves do not insist."

JOSEPH COULT,
JOHN R. EMERY,
Counsel for Appellees.

Supreme Court of the United States.

No. 1301, October Term, 1886.

THE NATIONAL NEWARK BANKING CO.,
OF NEWARK, N. J.,
Appellant,

and

THE MAYOR AND COMMON COUNCIL OF THE
CITY OF NEWARK, et al.,
Appellees.

ON APPEAL FROM U. S. CIRCUIT COURT,
For the District of New Jersey

Motion by Appellees to advance cause and for Hearing with No 1258, Oct. Term, 1886,

AND

Statement of the Reasons therefor.

JOSEPH COULT,
JOHN R. EMERY,
Counsel for Appellees.

CHARLES W. WELLS,
JOHN W. TAYLOR,
Counsel for Appellant.

NEWARK, N. J.:
WARD & TICHENOR, LAW CASE PRINTERS, 832 & 834 BROAD STREET.
1886.

WARD & TICHENOR, Law Case Printers, 832 and 834 Broad St., Newark, N. J.

Supreme Court of the United States.

OCTOBER TERM, 1886. No. 1301.

THE NATIONAL NEWARK BANKING COMPANY, OF NEWARK, NEW JERSEY,
Appellant,

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, AND A. JUDSON CLARK, *Receiver of Taxes,*
Appellees.

On Appeal from U. S. Circuit Court, District of New Jersey.

Motion to Advance Cause.

Motion for Advancement and for Hearing with No. 1,258.

The appellees hereby move the Court, to advance this cause upon its calendar, and to set down the same for argument upon some day in February or March, 1887, to be fixed by the Court ; *and also move* that the same be assigned for argument, either at the same time with Case No. 1258, of October Term, 1886, *The Mercantile National Bank of the City of New York* vs. *The City of New York, et al., appellees,* or before the decision in this latter case. A motion to advance this latter case is submitted at the same time with this motion.

Statement of the matter involved.

This is an appeal from a decree of the Circuit Court of the United States for the District of New Jersey, made on the twenty-third day of November, 1886, dismissing a bill filed by the appellants against the appellees in said Court on the twenty-third day of October, 1885.

The case involves questions concerning the taxation, by the statutes of the State of New Jersey, of the shares of stock of the National Banks located in the State. The bill claims that the statutes of the State of New Jersey in relation to taxing the shares of stock of National Banks, violate that restriction imposed by the act of Congress, (Rev. Stat § 5219,) which provides "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State," and that, by reason of such violation, the whole assessment of tax is void. The bill was filed by the appellant bank, on behalf of all the shareholders resident in Newark and of all the shareholders not resident in the State of New Jersey, being over two thirds of its shareholders.

Upon the filing of the bill, an injunction *pendente lite* was granted, restraining the defendants, appellees, from proceeding to collect the tax levied on these shares for the year 1885. At the final hearing in September Term, 1886, a decree was entered dismissing the bill, the same being entered without argument and upon the ground, as stated upon the record, that the decree made by the Circuit Court of the United States for the Southern District of New York, (WALLACE, *J.*,) in the cases there pending, (the Mercantile National Bank, No. 1258, *supra*, and others,) adjudicated questions similar to those involved in this case, and should be followed.

After the entry of the decree dismissing the bill in this case, application was made to the Circuit Judge, (Butler,) who made the decree, to continue the injunction pending this appeal, pursuant to the practice indicated in *Hovey* vs. *Macdonald*, 109 U. S 150, October Term, 1883, and will be granted on terms to be settled. A stay pending settlement of the order has been made.

The case is one of a class filed by seven of the National Banks of Newark, in each of which similar proceedings have been taken, and similar stays pending appeal granted. The whole amount of the taxes of 1885, the collection of which is thus stayed, is over $40,000, and the collection of the taxes for 1886, an equal amount, is also suspended pending the decision of these cases. Suits by the National Banks located in Jersey City and other cities of New Jersey, were also brought about the same time, and are now pending in the U. S. Circuit Court. In these also, the collection of taxes, amounting to a large sum yearly, is also stayed.

The principal question of law involved in the cases, is whether the statutes of New Jersey, which for the most part tax its corporations, other than banks, upon their property or capital stock, and exempt the shareholders where the companies are taxed, are in violation of the restriction in the National Banking act above set out, and discriminate against National Bank shareholders. Another question is, whether by the exemption of depositors in savings banks, where the banks are taxed, a like violation and discrimination occurs.

Reasons for the Application.

First. The cases involve important questions relating to taxation, and belong to the class of cases which, under the practice of the Court, are advanced on application. See *Evansville Bank* vs. *Britton*, 105 U. S. 323, October Term, 1881, where three cases, involving the taxation of National Bank shares by the statutes of New York and Indiana, were advanced and heard consecutively.

Second. Pending the appeal, the annual collection of taxes against the National Bank shares is practically stayed. An attempt to collect taxes for the years subsequent to 1885, would undoubtedly result in a renewal of the suits for the taxes of each year, with like decrees and stays of collection pending appeal. The regular and annual payment of taxes, or at least of the bulk of them, has become absolutely necessary for the purpose of carrying on municipal governments and sustaining their credit. And the amount here practically withdrawn from taxation, is so substantial a proportion of its annual levy that a failure to receive the tax will embarrass the city. The total taxable personal estate of the city of Newark for the year 1885 was about $18,730,160, of which National Bank shares made up $2,576,512. As the city by its charter is limited to a tax (for local purposes) of one per cent. on the valuation of its taxable property, and has for years required the whole of this minimum sum for carrying on its local government, the practical withdrawal of so large a sum from regular taxation has already become embarrassing.

Third. Pending the appeal, the bank shares will, under the existing law, still be included in the ratables as taxable property of the city, and under the tax laws of the State, the State and County taxes levied on these and the other ratables must be paid *by the city* to the county officers, thus virtually compelling the city, besides losing its local tax, to advance the annual taxes for State and County purposes levied on the shares pending the decision. The attempt pending the appeal to enforce collection from individual stockholders, even if it had not been enjoined by the Circuit Judge, would probably only result in the prosecution of numberless individual suits for injunction, and would be impracticable.

Fourth. Application to advance the New York cases above referred to has been made, and should these be advanced, it is important that the New Jersey cases should also be presented before any decision of the New York cases, in order that the Court may be apprised of any difference in the laws of the two States, which might render further argument in the New Jersey cases necessary or advisable. In the general policy of taxing the corporations and exempting the shareholders of corporations taxed, the two systems agree, but there are important differences—especially in relation to the taxes on savings banks—which may result in sustaining the New Jersey laws, even if the New York laws are held invalid. We respectfully submit, that even if it be not necessary or essential, that the Court, in deciding the

New York cases, should do so in full view of the effect on the New Jersey cases, yet this course would be reasonable and eminently proper.

Fifth. The questions involved are of such a character that a decision upon them would probably be made within a comparatively short time after the argument, and if the present State laws are invalid, it is not only important but it is also just, that the decision of the Court should be given before the next session of the legislature expires, in order that the system of taxation may be revised, if necessary, before the next annual levy of taxes is made.

JOSEPH COULT,
JOHN R. EMERY,
Counsel for the Appellees.

The appellant joins in the foregoing motion to advance the appeal, and concurs in the statement of facts above set forth.

CHARLES W. WELLS,
JOHN W. TAYLOR,
Counsel for Appellant.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 161.

THE TOWN OF CONCORD, PLAINTIFF IN ERROR,

vs.

SYLVIA J. ROBINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 161.

THE TOWN OF CONCORD, PLAINTIFF IN ERROR,

vs.

SYLVIA J. ROBINSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States courtrooms, in the city of Chicago, in the district aforesaid, before Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Wednesday, the first day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

WM. H. BRADLEY, *Clerk.*

SYLVIA J. ROBINSON
vs. } Assumpsit.
THE TOWN OF CONCORD.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the nineteenth day of September, A. D. 1881, came the plaintiff, by her attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, her *præcipe* for a summons and a bond for costs in said entitled cause, which said *præcipe* and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

Circuit Court United States of America. October Term, A. D. 1881.

SYLVIA J. ROBINSON
vs. } In Assumpsit.
THE TOWN OF CONCORD, COUNTY OF IROQUOIS, ILLS.

Damages $3,000.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The clerk will issue summons in the above-entitled cause directed to the marshal of said district to execute, returnable at the Oct. term, A. D. 1881.

Springfield, Sept. 17th, 1881.

SANDERS AND WILLIAMS,
Plaintiff's Attorneys.

Endorsed: Filed Sept. 19th, A. D. 1881. W. H. Bradley, clerk.

Bond for Costs.

Circuit Court. October Term, A. D. 1881.

SYLVIA J. ROBINSON
vs. } In Assumpsit.
THE TOWN OF CONCORD, COUNTY OF IROQUOIS, ILLS.

Damages $3,000.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

3 We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite

party in this action or to any of the officers of this court, and in default of payment of any costs ordered or adjudged to be paid by us *and* we hereby agree and stipulate that execution may issue against our property for any costs taxed against us.

Dated this 17th day of Sept., A. D. 1881.

SANDERS & WILLIAMS.
GEO. A. SANDERS
FRANK P. WILLIAMS.

Endorsed: Filed Sept. 19, A. D. 1881. W. H. Bradley, clerk.

On the same day, to wit, on the nineteenth day of September, A. D. 1881, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

Circuit Court of the United States of America.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the northern district of Illinois, Greeting:

4 We command you to summon the Town of Concord, county of Iroquois, Ills., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto Sylvia J. Robinson of a plea of trespass on the case upon promises, to her damage, as it is alleged, of three thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the 106th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within summons by reading the same to Walter B. Simons, supervisor of the town of Concord, Iroquois county, Illinois, and by delivering to him a true copy of this writ on the 19th day of September, 1881.

A. M. JONES,
U. S. Marshal,
By R. D. SHERMAN, *Dp't.*

Endorsed: Filed Oct. 1, A. D. 1881. W. H. Bradley, clerk.

5 Afterwards, to wit, on the twenty-second day of September, A. D. 1881, came the plaintiff, by her attorneys, and filed in said clerk's office her declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

In the United States Circuit Court for the Northern District of Illinois. October Term, A. D. 1881.

SYLVIA J. ROBINSON
vs.
THE TOWN OF CONCORD. } Assumpsit.

And now comes the plaintiff, Sylvia J. Robinson, a citizen of the State of Maine, by her attorneys, George A. Sanders and Thomas S. McClelland, and complains of the Town of Concord, county of Iroquois, State of Illinois, a body corporate and politic, organized under the laws of said State, and a citizen of said northern district of Illinois, of a plea of trespass on the case on promises, for that whereas the defendant heretofore made its certain three obligations, commonly called bonds, by each of which said bonds the defendant, by the name and style of the Town of Concord, and acting under due authority and by its proper corporate officials, promised to pay to
the bearer, at the Mechanics' National Bank, Chicago, on the
6 first day of June, A. D. 1881, the sum of one thousand dol-
lars, with interest thereon at the rate of ten per centum per annum, payable yearly, on the first day of June in each year, at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally thereto annexed until the payment of the said principal sum, said bond reciting upon its face that it was issued under and by virtue of a law of the State of Illinois to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and that the faith of said Township of Concord is thereby pledged for the payment of said principal sum and interest as aforesaid, and bearing the signatures of G. R. Dunning, supervisor, and E. D. Boone, clerk of said township, as of the first day of October, A. D. 1871, each of said bonds being of the same form, tenor, and effect, except as to the number thereof, to wit, of the form, tenor, and effect of bond No. 15, the numbers of said bonds being fifteen (15), sixteen (16), and seventeen (17). Said Town of Concord, moreover, made at the date and place aforesaid its certain twenty-one coupons, evidencing the interest due on said bonds as aforesaid, by each of which said coupons the defendant promised, on the date therein specified, to wit,
the dates specifically set forth below, to pay to the bearer one
7 hundred dollars, at the Mechanics' National Bank of the city
of Chicago, as one year's interest on the bond of corresponding number, each of said coupons bearing on its face the signatures of O. R. Dunning, supervisor, and E. D. Boone, clerk, said coupons being more particularly described as follows:

Seven coupons from bond No. 15, series 4 to 10, inclusive, due June 1st, of the years 1874 to 1881, inclusive.

Seven coupons from bond No. 16, series 4 to 10, inclusive, due June 1st, of the years 1874 to 1881, inclusive.

Seven coupons from bond No. 17, series 4 to 10, inclusive, due June 1st, of the years 1874 to 1881, inclusive.

All of said coupons being of the same form, tenor, and effect, except as to the numbers and dates of maturity thereof, to wit, of the same form, tenor, and effect as coupon No. 15, series 4, due June 1st, 1875, a copy of which appears below; that the plaintiff is the holder and owner of said bonds and coupons. By reason whereof, and by force of the statute in such case made and provided, the defendant became indebted and liable to pay to the plaintiff the several sums in the said coupons specified according to their tenor and effect, and being so indebted the defendant, in consideration thereof, then and there promised to pay to plaintiff the amounts in the several coupons specified according to their tenor and effect.

8 And whereas also the defendant, afterwards, to wit, on the first day of September, A. D. 1881, at the district aforesaid, became and was indebted to the plaintiff in the further sum of ten thousand dollars for goods, wares, and merchandise before that time sold and delivered by the plaintiff to the defendant at its request and in the like sum for labor and services before that time done and performed, and material for the same furnished by the plaintiff to the defendant at its request, and in the like sum for money before then laid out and expended by the plaintiff for the use of the defendant at its request, and in the like sum for money had and received by the defendant for the use of the plaintiff, and in the like sum for interest on divers sums of money before that time due and forborne by plaintiff to defendant at its request, and in the like sum for money then and there found to be due plaintiff from defendant on an account stated between them, and being so indebted the defendant, in consideration thereof, then and there promised well and truly to pay to the plaintiff the several amounts due as aforesaid on request.

Yet, although the time of payment in the said bonds and coupons specified has long since elapsed, the defendant has not paid the several sums due thereon according to the tenor and effect of said instruments or either of them or any part thereof, but refuses
9 so to do, nor has the defendant, though requested, paid the
several other sums of money due as aforesaid, nor either of them nor any part thereof, but neglects and refuses so to do, to plaintiff's damage of ten thousand dollars, wherefore he brings suit, &c.

THOMAS S. McCLELLAND AND
GEORGE A. SANDERS,
Attorneys for Plaintiff.

Copy of Instrument and Account.

(Bond No. 15.)

UNITED STATES OF AMERICA, *State of Illinois.*

Concord Township Railroad Bond No. 15.

Know all men by these presents that the Township of Concord, county of Iroquois, State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed, until the payment of the said principal sum.

10 This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said Township of Concord is hereby pledged for the payment of the said principal sum with interest as aforesaid.

In witness whereof the supervisor and clerk of said Township of Concord have subscribed this bond this first day of October, one thousand eight hundred and seventy-one.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

Coupon No. 15, Series 4.

$100. Concord Township Railroad Bond. No. 15.

Interest warrant.

On the first day of June, 1874, the Township of Concord, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the Mechanics' National Bank of the city of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R DUNNING, *Supervisor.*

Concord Township, Dr., to Sylvia J. Robinson.

	To goods, wares, and merchandise, &c.	$10,000
11	" labor and services	10,000
	" money due as interest	10,000
	To money had and received	10,000
	" money paid and expended	10,000
	" money lent and advanced	10,000
	" money due on account stated	10,000

Endorsed: Filed Sept. 22, 1881. W. H. Bradley, cl'k.

Afterwards, to wit, on the fifth day of October, A. D. 1881, came the defendant, by its attorneys, and filed in said clerk's office its demurrer in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

In the Circuit Court Thereof, Seventh Judicial Circuit.

SYLVIA J. ROBINSON }
vs. } Assumpsit.
THE TOWN OF CONCORD. }

And the said defendant, by Bisbee & Ahrens, its attorneys, comes and defends the wrong and injury, &c., and says that the said declaration and the matters therein contained in manner and form 12 as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain her aforesaid action thereof against the defendant, and that it, the said defendant, is not bound by law to answer the same.

And this it is ready to verify; wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining her aforesaid action thereof against the said defendant, &c.

And the said defendant states and shows to the court here the following cause of demurrer to said declaration—that is to say, that the citizenship of said plaintiff and defendant is not alleged therein with sufficient certainty to give this court jurisdiction herein, and also that the said declaration is in other respects uncertain, informal, and insufficient, &c.

And the said defendant further says that the said first count of the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have her aforesaid action thereof against the defendant, and that it, the said defendant, is not bound by law to answer the same.

And this it is ready to verify; wherefore, by reason of the insufficiency of the first count of said declaration in this behalf, 13 the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining her aforesaid action thereof against it, &c.

And the said defendant states and shows to the court here the following causes of demurrer to the said first count of the said declaration—that is to say, that said first count is uncertain, informal, and insufficient in this:

1. That it is uncertain whether said plaintiff seeks therein to recover upon one or all three of the alleged bonds therein mentioned or upon the alleged interest coupons mentioned therein only.

2. That it is not alleged therein that the supposed bonds and coupons therein mentioned were in fact executed under and by virtue and in accordance with the law therein mentioned.

3. That it is not alleged therein when or to whom said bonds and coupons, or any of them, were delivered, or that they, or any of them, were ever delivered to any person or persons by the said defendant.

4. That there is no statement of facts contained in said first count whereby it can be determined whether said supposed bonds and coupons were executed and delivered in accordance with said law.

5. That by virtue of the constitution of the State of Illinois, which came into operation on the 2nd day of July, A. D. 1870, there 14 was in the defendant no authority to issue the said supposed bonds and coupons under and by virtue of the law in said first count mentioned.

6. That the court will take judicial notice of said constitution and said law and thereunder adjudge said supposed bonds and coupons to be void, and also that the said first count of said declaration is in other respects uncertain, informal, and insufficient, &c.

BISBEE AND AHRENS,
Defendant's Attorneys.

I, John P. Ahrens, an attorney and counsellor at law, do hereby certify that in my judgment the foregoing demurrer is well founded in point of law.

JOHN P. AHRENS.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court Thereof, Seventh Judicial Circuit.

SYLVIA J. ROBINSON *vs.* THE TOWN OF CONCORD.

STATE OF ILLINOIS,
Cook County } *ss:*

John P. Ahrens, being duly sworn, deposes and says that he is one of the attorneys for the defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for the purpose of delay.

JOHN P. AHRENS.

Subscribed and sworn to before me this 5th day of October, A. D. 1881.

[SEAL.] FARLIN Q. BALL,
Notary Public.

Endorsed: Filed Oct. 5, 1881. W. H. Bradley, cl'k.

15 Afterwards, to wit, on the eighteenth day of May, in the adjourned May term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

SYLVIA J. ROBINSON
vs.
THE TOWN OF CONCORD. } Assumpsit.

Now come the parties, by their attorneys, and, on motion of the defendant, by its attorney, leave is given it to withdraw its demurrer and to file a plea instanter, and, upon issue joined upon said plea by agreement of the parties as per stipulation filed, they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence and the argument of counsel the court takes the same under advisement.

On the same day, to wit, on the eighteenth day of May, A. D. 1883, came the defendant, by its attorneys, and filed in said clerk's office its plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

16 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss.*

In the Circuit Court Thereof. May Term, A. D. 1883.

SYLVIA J. ROBINSON
vs.
THE TOWN OF CONCORD. } Assumpsit.

And the said defendant, by Bisbee, Ahrens and Decker, its attorneys, comes and defends the wrong and injury when, &c., and says that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it the said defendant puts itself upon the country, &c.

BISBEE, AHRENS & DECKER,
Defendant's Att'ys.

Endorsed: Filed May 18, 1883. Wm. H. Bradley, clerk.

Afterwards, to wit, on the first day of August, in the July term of said court, A. D. 1883, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

17 *Judgment.*

SYLVIA J. ROBINSON
vs.
THE TOWN OF CONCORD. } Assumpsit.

Now on this day come the parties, by their attorneys, and the court having considered and being now fully advised finds the issues for the plaintiff and assesses her damages against said defendant at the sum of six thousand three hundred and fifty dollars.

It is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant said sum of six thousand three hundred and fifty dollars, her damages so as aforesaid assessed, together with her costs and charges in this behalf expended, taxed at the sum of thirty-eight dollars and sixty-eight cents.

18 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record, which exceptions are in the words and figures following, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss*:

In the Circuit Court Thereof. July Term, A. D. 1883.

SYLVIA J. ROBINSON *vs.* THE TOWN OF CONCORD. } Assumpsit.

Be it remembered that upon the trial of the above-entitled cause before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, sitting as a judge of said circuit court, a jury being waived by a stipulation in writing filed in said cause in pursuance of the statute, the plaintiff, to maintain the issues on her behalf, offered and read in evidence the following, to wit:

A certain agreement in writing of admitted facts, as follows:

19 *Admitted Facts.*

UNITED STATES OF AMERICA,
Northern District of Illinois.

Oct. Term, A. D. 1881.

SYLVIA J. ROBINSON *vs.* TOWN OF CONCORD.

It is hereby stipulated by and between Sanders and Williams, attorneys for plaintiff, and Bisbee and Ahrens, attorneys for defendant, that the following copies of the record of the Town of Concord and statements following are admitted facts as evidence in this case:

That Sylvia J. Robinson, the plaintiff, is a citizen of the State of Maine.

That the Town of Concord is a corporation organized and existing under the township laws of the State of Illinois and a citizen of the northern district of Illinis, located in Iroquois county,

20 Illinois, and was such long prior to the commencement of this suit.

That the following is a copy of bond No. 15, and that all the other bonds referred to in the declaration are a *fac-simile* of it save as to the No. of the bonds:

"UNITED STATES OF AMERICA, *State of Illinois.*

"No. 15. Concord. **$1,000.**

"Vignette.

"Township Railroad Bond.

"Know all men by these presents that the Township of Concord, in the county of Iroquois and State of Illinois, acknowledge itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said Township of Concord promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon
21 at the rate of ten per cent. per annum, which interest shall be payable yearly on the first day of June in each year at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed, until the payment of said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said Township of Concord is hereby pledged for the payment of said principal sum and interest aforesaid.

"In witness whereof the supervisor and clerk of said Township of Concord have subscribed this bond this first day of October, one thousand eight hundred and seventy-one.

"E. D. BOONE, *Clerk.*

"G. R. DUNNING, *Supervisor.*"

22 [Revenue stamp.]

Endorsed.

"AUDITOR'S OFFICE, ILLINOIS,
"SPRINGFIELD, *October 20th*, 1871.

"Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled 'An act to fund and provide for the paying the railroad debts of counties, townships, cities, and towns,' in force April 16th, 1869.

"In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] "C. E. LIPPINCOTT,
"*Auditor P. A.*"

The following is a copy of coupon due June 1, 1881, from bond No. 15, and all other coupons in the declaration described are *facsimiles* of said coupon, save as to serial numbers of bonds from which they are cut or attached and the time when they mature:

23 "Concord Township Railroad Bond.

"100. Interest warrant. No. 15.

"On the first day of June, 1881, the Town of Concord, Iroquois county, State of Illinois, will pay the bearer one hundred dollars at the Mechanics' National Bank of the city of the Chicago, being one year's interest on bond numbered as above.

"E. D. BOONE, *Clerk.*

"G. R. DUNNING, *Supervisor.*"

Bonds were registered by auditor of State of Illinois.

STATE OF ILLINOIS,
COUNTY OF IROQUOIS, *October* 19, 1871.

To the auditor of public accounts of the State of Illinois.

SIR: I hereby certify that the following-described bonds are entitled to registration in your office under the provisions of the act
entitled An act to fund and provide for paying the railroad
24 debts of counties, townships, cities, and towns, in force April
16th, 1869, the bonds being numbered from No. 1 to No. 25,
incl., for $1,000 each, dated June 1st, 1871, and payable June 1st, 1881, being in all 25 bonds and amounting to $25,000, and bearing interest at the rate of 10 per cent. per annum, payable annually on the 1st day of June.

These bonds are issued by the township of Concord, in the county of Iroquois, and State of Illinois to the Chicago, Danville and Vincennes Railroad Company, under and by authority of the provisions of an act entitled An act to authorize cities, towns, and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, approved March 7th, 1867, and by a vote of the people of said township at an election held on the 20th day of November, 1869.

And I, as supervisor of said town, do hereby certify that
25 all the preliminary conditions in the act, "in force April 16th,
1869," required to be done to authorize the registration of those bonds, and to entitle them to the benefit of said act last referred to, have been complied with to the best of my knowledge and belief.

GEORGE R. DUNNING,
Supervisor, Town of Concord.

Subscribed and sworn to by the said George R. Dunning before me this 10th day of October, A. D. 1871.

D. W. AYERS,
Justice of the Peace.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 17th,* 1881.

I, Charles P. Swigert, auditor of public accounts of the State of

Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of George R. Dunning as supervisor of Concord township (Iroquois Co.) in relation to registration of bonds issued by said township to the Chicago,
26 Danville and Vincennes Railroad Co., now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office at Springfield the day and year first above written.

[SEAL.] CHARLES P. SWIGERT,
Auditor of Public Accounts.

Copy of Call for Special Election of 20th Day of November, A. D. 1869.

The undersigned town officers and twelve freeholders of the town of Concord, in the county of Iroquois and State of Illinois, do state that a special town meeting is necessary to the interests of said town for the purpose of voting a tax to be levied on the taxable property of said town to the aggregate amount of twenty-five thousand dollars, to be assessed and collected in two annual installments, to be donated to the company making the Vincennes, Danville and Chicago railroad, provided said company build or make said
27 road through the village of Concord, in said town of Concord, and the town of Sheldon, in Sheldon township. We would therefore request that immediate notice be given thereof and that said meeting be held on the 20th day of November, A. D. 1869.

Witness our hands this 9th day of November, A. D. 1869.

JESSE R. EASTBURN,
Supervisor,
EDWARD D. BOONE,
Town Clerk.
[In pencil:] EDWARD D. BOONE, AND
A. O. WHITMAN,
Justice of the Peace,

And twelve freeholders also sign this call.

Minutes of a special town meeting held pursuant to legal notice posted ten days previous to said meeting in five of the most public places in the town of Concord, as required by law, in the schoolhouse in the village of Concord on the twentieth day of November, A. D. 1869, for the purpose of voting for or against levying a tax on the taxable property of said Town of Concord, amounting in the aggregate in two years to the sum of twenty-five thousand
28 dollars, to be donated to the Vincennes, Danville and Chicago Railroad Company, provided said company run said railroad through the villages of Concord and Sheldon, and take such measures in pursuance of law as may be considered necessary to carry the objects of said meeting into effect.

Which meeting was called to order at the hour of 9 o'clock a. m. by Edward D. Boone, town clerk, and, on motion of William Felton, Jesse R. Eastburn was chosen moderator to preside at said meeting, who, being duly sworn, according to law, entered upon the discharge of the duties of his office. After the organization of the meeting and proclamation made according to law the polls were opened and the electors proceeded to vote, as is the law and custom at town meetings, until the close of the polls, and after canvassing the votes we found the result to be—for the tax had 66 votes; against the tax had 53 votes.

Meeting adjourned *sine die.*

JESSE R. EASTBURN,
Moderator.

29 EDWARD D. BOONE,
Town Clerk.

Notice of Acceptance of the Donation by the Railroad Company.

To the supervisor and town clerk of the Town of Concord, in the county of Iroquois and State of Illinois:

Whereas said Town of Concord did, on the 20th day of November, A. D. 1869, vote to donate the sum of twenty-five thousand dollars to aid the Vincennes, Danville and Chicago Railroad Company to construct their railroad:

Now, therefore, you are hereby notified that said railroad company do accept said offer and agreement of said town to aid them in the construction of their railroad, and you are further notified that they will construct their railroad through or into said Town of Concord in pursuance to the terms and conditions voted by said
town, and will demand and claim the amount of money
30 so voted by said town.

Dated 20th day of June, 1870.

(Signed) BLADES AND KAY,
Att'ys for Chicago, Danville and Vincennes Railroad Co.

STATE OF ILLINOIS, }
County of Iroquois, } *ss:*

Be it remembered that on the 9th day of October, A. D. 1871, the supervisor and town clerk of the Town of Concord, in said county, in pursuance of law, proceeded to execute township bonds numbered from one to twenty-five consecutively for one thousand dollars (principal) each, with interest coupons, ten attached to each bond, of one hundred dollars each, payable yearly, at ten per cent. on the principal, for ten years from the first day of June, A. D. 1871, in favor of the Chicago, Danville and Vincennes Railroad Company, in con-
sideration of said company having run their road through the
31 villages of Concord and Sheldon, and in accordance with the
vote of Concord township cast on the 20th day of November,
A. D. 1869, donating twenty-five thousand dollars in aid of said company on the conditions above stated.

EDWARD D. BOONE,
Town Clerk.

Said bonds delivered by me to George R. Dunning, supervisor.

Copy of Call for Election to Vote for $20,000 Appropriated to Kankakee and Indiana R. R. Co..

To the town clerk of the Town of Concord, in the county of Iroquois and State of Illinois:

The undersigned citizens, freeholders, legal voters, and taxpayers of said town, request you to call an election according to law for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty thousand dollars to
32 the capital stock of the Kankakee and Indiana Railroad Company, said twenty thousand dollars to be in lieu of the twenty-five thousand [dollars] voted to the Chicago, Danville and Vincennes Railroad Company, and also to vote for rescinding the vote of the twentieth day of November, A. D. 1869, of twenty-five thousand dollars to the Chicago, Danville and Vincennes Railroad Company, on the conditions that the railroad of said Kankakee and Indiana Railroad Company shall pass through the village of Concord within eighty rods of the Concord bridge and [a] good and sufficient depot be built in the village of Concord, and also a good side track in the same, the road to be completed in one year from this date and the cars running on the same, the company to take township bonds running ten years at ten per cent. interest per annum
33 at par value in full of said twenty thousand dollars, said bonds to commence bearing interest from the date of the completion of said road and the running of the cars thereon; said company failing to comply with the above conditions the promises above stated are to be null and void.

Dated May 30, 1870.

(Signed) WM. FELTON, *Supervisor*,
EDWARD D. BOONE,
Town Clerk,

And twelve freeholders.

Notice of an Election.

"An election will be held at the school-house, in the village of Concord, on Thursday, the 30th day of June, A. D. 1870, to vote for or against subscribing $20,000 to the Kankakee and Indiana R. R. Company and rescinding the vote donating $25,000 to the Chicago, Danville and Vincennes R. R. Company, cast at an election held on the 20th day of November, 1869, on condition that said Kankakee and Indiana R. R. Company run their said railroad from
34 Lafayette, Indiana, to Kankakee city, Illinois, through the town of Concord, in the township of Concord, Iroquois county, and State of Illinois, within eighty rods of the bridge across the Iroquois river at said town of Concord, and build a side track and a good and sufficient depot in said town within one year from the date of this election, to wit, the 30th day of June, 1870, and to have the cars running the whole route in the same time, and the said $20,000 all to be paid in township bonds bearing ten per cent. interest per annum in favor of said company in full of said sub-

scription in ten years from the date of the completion of said railroad and running of the cars thereon.

"Dated this 30th day of May, 1870.

"EDWARD D. BOONE,
"*Town Clerk.*"

Copy of Minutes of Special Election Held June 30th, 1870.

"Minutes of meeting held pursuant to foregoing notice.

35 "Iroquois County, State of Illinois.

"Meeting called to order by E. D. Boone, town clerk. On motion John B. Hill was chosen moderator, who, being duly sworn according to law, entered upon the duties of his office. E. D. Boone was sworn as clerk of said election.

"After an address by Dr. Nott and further remarks by E. D. Boone the election proceeded until six o'clock p. m. Polls closed after proclamation, and the presiding officers proceeded to canvass the polls. The following is the statement of the result of the canvass of votes as publicly canvassed by the presiding officer at said election: For subscription had ninety-two votes; against subscription had twenty-eight votes; the whole number of votes cast at
said election being one hundred and twenty; and the whole
36 number of votes of the township of Concord being one hundred and sixty-nine, according to the register recently taken by the township board of registers June, 1870; consequently the ninety-two votes for subscription being a clear majority of the whole of the township, entitled it to all the benefits of the act of 1869 in relation to revenue railroad tax and registry of bonds, &c., &c.

JOHN B. HILL,
Moderator.
EDWARD D. BOONE,
Town Clerk.

Then follows poll-book or list of names and numbers of votes, 120 in all, and the form of ballot used. That the Indiana and Kankakee railroad was not built is agreed on in these stipulations.

It is further stipulated and agreed that the demurrer of the defendant to the declaration filed herein shall be withdrawn and that said defendant be permitted under the general issue to introduce any testimony which would be competent under special pleas, and that a jury be waived and this cause be tried by the court without a jury.

SANDERS & WILLIAMS,
For Pl'tff.
BISBEE AND AHRENS,
Counsel for Defendant.

Endorsed: Filed Mar. 6, 1882. W. H. Bradley, clerk.

37 Also certain acts of the Legislature of the State of Illinois as follows: Act of March 7, 1867, found in vol. 1, Private Laws of Ills. of 1867, p. 842.

In force March 7, 1867.

An act to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad.

Payment of.

SECTION 1. Be it enacted by the people of the State of Illinois, represented at the General Assembly, That all incorporated towns and cities, and towns acting under the township organization law, which lie wholly or partly within 20 miles of the east line of this State, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town, or township, respectively:

Proviso.

Provided, however, That the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual, or special meeting by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, 38 and if the majority of votes cast shall be in favor of the appropriation, then the same shall be made; otherwise not.

Taxes.

§ 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law.

Taxes legalized and valid.

§ 3. And be it further enacted, That all the taxes heretofore voted in any and all of the townships, towns, or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

Conditional votes.

§ 4. And be it further enacted, That any and all of said townships, towns, or cities within the county of Iroquis and along said line of road, as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county to build the additional length of road required to make said town of Watseka a point in the same, then, and in that case, said road shall be so located as to run through or adjoining said town of Watseka.

39 § 5. This act shall take effect and be in force from and after its passage.

Approved March 7, 1867.

40 Act of Feb'y 26, 1869. Found in vol. 3, Private Laws of Ills. of 1869, p. 355.

In force Feb. 6, 1869.

An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville and Vincennes railroad.

Taxes, appropriations.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the taxes, aids, and appriations heretofore voted by towns, townships, or cities along the proposed route of the Chicago, Danville and Vincennes railroad, or in the vicinity of said railroad, be, and the same are hereby, legalized, ratified, and confirmed, and the appropriation so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: Provided, said road shall run through said township of Yellowhead. This section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermillion.

Liable to pay taxes.

§ 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite to said towns, townships, or cities, as the case may be.

41 Levy taxes.

§ 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations when the time of payment shall arrive, as hereinbefore provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or apprpriations, or said towns, cities, or townships may borrow money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at such prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be payable semi-annually and may provide that principal and interest be paid in the city of Chicago, and said towns, townships, or cities shall have power to levy and collect taxes as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal sum when it shall become due.

Action of supervisors, legal.

§ 4. Be it further enacted, That a certain order or resolution of the board of supervisors of the county of Iroquois, passed by said

42 board on the seventeenth (17) day of September, 1868, and a certain other order or resolution of said board, passed on the eighteenth (18) day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their said railroad, be, and the same are hereby, legalized, ratified, and confirmed, and said orders

or resolutions shall be in full force and effect upon the terms and conditions in said orders or resolutions expressed.

§ 5. This act shall be a public act, and be in force from and after its passage.

Approved February 26, 1869.

43 Act of March 24, 1869. Found in vol. 3, Private Laws of Ills. of 1869, p. 355.

In force March 24, 1869.

An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville, and Vincennes railroad to contribute towards the construction of said railroad.

Counties to aid railroad, etc.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several counties through which the Chicago, Danville and Vincennes railroad shall pass are hereby authorized, by action of the board of supervisors, or by action of the county court in counties not acting under township organization, to make appropriations or loan the credit of such county or counties in such sum or sums and upon such terms and conditions as they may deem proper, to extend and furnish aid to the Chicago, Danville, and Vincennes Railroad Company in constructing the said railroad: Provided, That the question as to whether such county or counties shall make such appropriation or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said board of supervisors or county court, as the case may be, at any 44 regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed to said railroad, and a majority shall have voted for the same. The posting of said notices shall, in other respects, be regulated by the law now in force concerning the posting of notices for the election of county officers.

Submitted to legal voters.

§ 2. The legal voters of any town, township, or city along the line of said railroad shall run into or through said town, township, or city, or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriations or donations to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected to promptly meet any obligations assumed under and by virtue of this act.

Contributions.

§ 3. Whenever any township shall desire to contribute toward the construction of said railroad, as provided in section two of this act, the vote may be taken at any regular or special meeting, and, if at any special town meeting, may be called as now provided by law for such meetings, and whenever the voters of any town or city shall desire to con-

Notice of election.

tribute toward the construction of said railroad a special 45 election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city of the time, place, and object of such election; or such appropriation may be voted at any regular election in such town or city. The votes at any election held in any incorporated town or city for the object herein mentioned shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

May borrow money.

Issue bonds.

§ 4. The authorities of any township, town, or city—such township, town, or city having voted having voted to contribute aid in the construction of said railroad—may borrow money to promptly meet such contribution, and issue bonds of such township, town, or city at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such 46 time or times as they may deem for their best interests, and shall have power to levy and collect such taxes as may be necessary to pay accruing interest or pay the principal sum.

Payment on comtion of road.

§ 5. In all cases when any township, town, or city shall have voted to contribute any aid, as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town, or city.

Right of way.

§ 6. The authorities of any such township, town, or city may issue and appropriate (of) the moneys hereinbefore provided to be raised for the purpose of procuring the right of way for said railroad company for their railroad in the county or counties where such township, town, or city shall be situated, and may authorize the collection of money for such purpose as soon as said railroad line shall be permanently located.

Validity of.

§ 7. Whatever any township, town, or city along the line of said railroad shall have heretofore done toward securing the right of way for said railroad, is ratified and declared to be valid.

Contributions ratified.

§ 8. All aids, contributions, or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois, and 47 Vermillion, either of townships, towns, cities, or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered: Provided, That this section shall not apply to the townships of Butler, Georgetown, and Ellwood, in the county of Vermillion, nor to the appropriation made by the county of Vermillion by its board of supervisors.

§ 9. This shall be a public act, and shall be in force from and after its passage.

Approved March 24, 1869.

48 Act of April 16, 1869. Found in vol. — of Public Laws of Ills. of 1869, p. 316.

In force April 16, 1869.

An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns.

Refunding of State taxes.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever any county, township, incorporated city, or town shall have created a debt which still remains unpaid, or shall create a debt under the provisions of any law of this State, to aid in the construction of any railway or railways that shall be completed within ten years from and after the passage of this act, whose line shall run near to, into, or through said county, township, city, or town, it shall be lawful for the State treasurer, and he is hereby required, immediately upon receiving the revenue for each year, to place to the credit of such county, township, city, or town so having incurred such indebtedness, in the State treasury annually, for and during the term of ten years, all the State taxes collected and paid into the State treasury on the increased valuation of the taxable property of of said county, township, city, or town, as shown by the annual assessment-rolls, over and above the amount of the assessment-roll 47 of the year 1868, excepting the State school tax and the two-mill tax provided for by the constitution of this State for the payment of the State debt, and whenever any county, township, city, or town shall have created a debt, as aforesaid, it shall also be lawful for the collector of taxes, and he is hereby required, annually, for and during the term of ten years, to pay into the State treasury all the taxes collected for any purpose whatever on the assessment of the railroad or railroads for whose aid the said debt was incurred, including the road-bed and superstructure and all fixtures and appurtenances thereof, the locomotives, cars, machinery, and machine shops, depots, and all other property, real and personal, of said railway company within such county, township, city, or town, and immediately upon receiving the same the State treasurer shall place to the credit of such county, township, city, or town, in the State treasury, the whole amount so received, except the State school tax and the two-mill tax provided by the constitution of this State for the payment of the State debt; and it shall be the duty of said collector of taxes to furnish the State auditor a separate and detailed account of the amount of taxes collected from 50 said railway or railways at the time of his annual settlement with the State auditor, and the State treasurer shall give to said collector separate receipts for the respective amounts paid into the State treasury to the credit of said county, and said receipts shall be taken and received by the county court, or other legal authorities, as vouchers for the amount collected on account of the county and local assessments on said railroad property in the annual settlement with such collector, and the several amounts of money in this section provided and ordered to be placed to the credit of such county, township, city, or town shall be applied by the State treasurer to the payment of the bonded railroad debt of such county, township, city, or town, as hereinafter provided.

Registry of bonds by auditor.

§ 2. And the county clerk, or other proper officer, upon the issuing of the bonds in payment of said railroad debt, shall make a registration thereof in a book to be kept for that purpose in his office, showing the date, amount, number, maturity, and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given, and the said bonds and bonds heretofore 51 issued and still unpaid, in order to receive the benefits of this act, shall be registered by the holder thereof at the office of the auditor of public accounts, who shall cause the same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity, and rate of interest of such bond, under what act, and by what county, township, city, or town issued, and the auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which registration and certificate the auditor shall be entitled to a fee of one dollar from the holder of each bond.

Requirements of counties.

§ 3. In all cases, when any county, township, incorporated city, or town shall issue bonds under the provisions of law, and to be entitled to the benefits of this act, it shall be the duty of the county clerk of such county, or of the officer to whom or to whose office the assessment-rolls for State taxation are or shall be returnable, within five days after such returns, to make out and transmit to the State auditor, to be filed in his office, a certificate stating the total value of all property, real and personal, within such county, township, city, or town, as exhibited by such assessment.

52 Interest on bonds—how paid.

Duties of county clerks.

§ 4. When the bonds of any county, township, city, or town shall be so registered the State auditor shall annually ascertain the amount of interest for the current year due and accrued and to accrue upon such bonds, and from the amount so ascertained he shall deduct the amount in the State treasury placed to the credit of such county, township, city, or town, as herein provided and directed; and from the basis of the certificate of valuation of property heretofore provided to be transmitted to him, or, in case no such certificate shall be

filed in his office, then upon the basis of the total assessment of such county, township, city, or town, for the year next preceding, he shall estimate and determine the rate per centum of the valuation of property within such county, township, city, or town requisite to meet and satisfy the amount of interest unprovided for, together with the ordinary cost to the State of collection and disbursement of the same, to be estimated by the auditor and treasurer, and shall make and transmit to the county clerk of such county, or to the officer or authority whose duty it is or shall be to prepare the estimates and books for the collection of State taxes in such
53 county, township, city, or town, a certificate stating such esti-
mated requisite per centum for such purpose, to be filed in his office; and the same per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied or provided by law for purposes of State revenue, and shall be so treated by such clerk, officer, or authority in making such estimates and books for the collection of taxes, and the said tax shall be collected with the State revenue, and all laws relating to the State revenue shall apply thereto, except as herein otherwise provided.

Taxes—how applied.

§ 5. The State shall be deemed the custodian only of the several taxes so collected and credited to such county, township, city, or town, and shall not be deemed in any manner liable on account of any such bonds; but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for until fully satisfied. The State shall annually collect and apply all the said taxes and funds placed to the credit of such county, township, city, or town, for and during the term of eight years, to the payment of
54 the annual interest on such registration bonds of such
county, township, city, or town in the same manner as interest on the bonds of the State is or may be collected and paid, but in like moneys as shall be receivable in payment of State taxes, and for and during the remainder of the term of years during which said registered bonds shall remain unpaid the funds provided in section one of this act, accruing from taxes collected on the property of said railroad or railroads, and the surplus, if any, of the other funds in this act provided remaining after the payment of the interest on the bonds, shall be applied to the payment of the principal of said registered bonds on presentation to the State treasury, or the treasurer shall purchase the same in open market at not more than par; and upon such payment or purchase of said bonds the amount paid upon the principal of said bonds shall be indorsed thereon, and receipts therefor shall be taken and filed in the office of the State treasurer, and the interest coupons or bonds, when fully paid, shall be returned to the office of the State treasurer and shall be canceled and destroyed in the same manner as those appertaining to the State debt. And the fund de-
55 rived from the taxes collected on the increased assessment
over the year 1868 and the tax levied to meet the interest on

said registered bonds shall continue to be annually applied to the interest of said bonds. And the said taxes and funds required in this act to be placed to the credit of counties, townships, cities, and towns shall be applied by the State treasurer to the payment of the registered railroad bonds of such county, township, cities, or towns equally and without discrimination.

In case of surplus.

§ 6. The State may out of such funds first retain or satisfy the ordinary costs of the State of the collection and disbursement thereof, and in case of non-presentment of any such bonds or interest coupons for payment at the time and place when and where the interest on the State debt is or may be paid, then, on the beginning of the next year, the money by reason thereof undisbursed, together with any surplus for any cause remaining, shall be carried to the fund of such county, township, city, or town of the current or ensuing year, and be considered by the auditor in making his next estimate for taxation therein for such year under this act, and shall be applied
56 accordingly during the first eight years of the operation of this act. All laws relating to the payment of interest on the State debt, or the cancelation of evidences thereof, not inconsistent with this act shall apply to the receipt, custody, and disbursement of the taxes and funds provided by this act.

Requirements previous to registry of bonds.

§ 7. And it shall not be lawful to register any bonds under the provisions of this act or to receive any of the benefits or advantages to be derived from this act until after the railroad in aid of the construction of which the debt was incurred shall have been completed near to or in such county, township, city, or town, and the cars shall have run thereon; and none of the benefits, advantages, or provisions of this act shall apply to any debt unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city, or town, under the provisions of the laws of this State, and a majority of the legal voters living in said county, township, city, or town were in favor of such aid, subscription, or donation; and any county, township, city, or town shall have the right, upon making any
57 subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions, or donations shall be made, and such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with; and the presiding judge of the county court or the supervisor of the township or the chief executive officer of the city or town that shall have issued bonds to any railway or railways immediately upon the completion of the same near to, into, or through such county, township, city, or town as may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds and to entitle them to the benefits of this act have been complied with, and shall transmit the same to the State auditor with a statement of the date,

amount, number, maturity, and rate of interest of such bonds, and to what company and under what law issued; and thereupon the said bonds shall be subject to registration by the State auditor as is hereinbefore provided.

Representative of counties to be appointed by Governor.

§ 8. And each railway company in aid of which any bonds shall hereafter be issued by any county, township, incorporated, city or town to pay for any subscription to the capital 58 stock of such company, or for any donation made to such company, shall give to such counties, townships, cities, and towns, collectively, a representation *of* the board of directors of such company of one-fourth of the number of such board of directors until after the said railway shall have been completed and the cars shall have run thereon and until all the conditions of the subscriptions and donations to such railway company by such counties, townships, cities, and towns shall have been fully settled and complied with by said railway company; and thereafter the said counties, townships, cities, and towns shall be represented in said boards of directors only in the manner and proportion that other stockholders are represented, and the Governor of the State is hereby authorized and empowered to appoint the directors herein provided to represent the interests of said counties, townships, cities, and towns in the boards of directors of such railways as shall receive bonds to be entitled to the benefits of this act.

Duties of auditor.

§ 9. And the State auditor, from the total value of all the property in the State, after the same shall have been equalized in accordance with the provisions of "An act to amend the revenue laws and to establish a State board of equalization of assessments," approved March 8, 1867, shall deduct the amount of the said increased valuation of *of* the 59 taxable property above the valuation of the year 1868 in such counties, townships, incorporated cities and towns as may be entitled to the benefits of this act, and the taxes upon which are herein directed to be credited to counties, townships, cities, and towns, and upon the amount remaining he shall cause to be collected such a per cent. as shall be sufficient to pay the appropriations and other demands upon the Treasury due to the end of each fiscal year; and the same per cent. shall also be collected on the said increased valuation above the valuation of the year 1868, and applied as herein provided.

§ 10. Upon the payment of any such registered bond or interest coupons by the county, township, city, or town issuing the same — the presentation thereof to the State auditor he shall cause due entry thereof to be made in his office.

§ 11. And if the principal and interest of the bonds registered under the provisions of this act shall be fully paid and canceled at any time before the expiration of the full term of ten years, during which the funds provided in section one of this act are to be applied to the credit of such county, township, city, or town, then the provisions of this act in respect thereto shall cease and determine, and no further money derived from said taxes shall be so applied.

60 § 12. The collector's bonds in counties, townships, cities, and towns where collections shall be made under the provisions of this act shall be increased fifty per centum, and collectors in counties not under township organization shall pay into the State treasury a sufficient amount of the taxes collected in such county to meet the interest to be annually paid on such registered bonds on or before the 20th day of June in each year, and there shall be allowed and paid to county, township, city, and town collectors for collecting and paying over the taxes levied by virtue of this act the following rates of commissions, to be ascertained and computed in the same manner that commissions for collecting and paying over the State taxes are ascertained and computed and paid from the taxes so collected, to wit: to township, city, or town collectors, at the rate of two per centum on all sums collected, and to county collectors at the rate of one per cent. on all sums received by them from township, city, or town collectors, which shall be in full for receiving the same and paying it into the State treasury and for adjusting the accounts of and settling with the township, city, and town collectors for their collections of said tax, and a com-
61 mission of three per cent. on all sums by themselves collected and paid over into the State treasury.

§ 13. And this act shall take effect from and after its passage.

Also three certain papers, purporting to be bonds of the Town of Concord, as follows:

62 UNITED STATES OF AMERICA, *State of Illinois.*

No. 15. Concord Township Railroad Bond. $1,000

[Written across the face in red ink:] One thousand dollars.

Know all men by these presents that the Township of Concord, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said Township of Concord promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed,
63 until the payment of the said principal sum.

This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax, to aid the construction of the Chicago, Danville, and Vincennes railroad, and the faith of said Township of Concord is hereby pledged for the payment of said principal sum and interest, as aforesaid.

In witness whereof the supervisor and clerk of said Township of

Concord have subscribed this bond this first day of June, one thousand eight hundred and seventy-one.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

[2.50 cts. rev. stamp.]

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 20th*, 1871.

64 I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

65 UNITED STATES OF AMERICA, *State of Illinois.*

No. 16. Concord Township Railroad Bond. $1,000.

[Written across face in red ink:] One thousand dollars.

Know all men by these presents that the Township of Concord, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said Township of Concord promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of June in each year, at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto
66 annexed, until the payment of the said principal sum.

This bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said township of Concord is hereby pledged for the payment of said principal sum and interest, as aforesaid.

In witness whereof the supervisor and clerk of said Township of Concord have subscribed this bond this first day of June, one thousand eight hundred and seventy-one.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

[2.50 cts. rev. stamp.]

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Oct.* 24, 1871.

I, Charles E. Lippincott, auditor of public accounts of the
67 State of Illinois, do hereby certify that the within bond has
been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] E. LIPPINCOTT,
Auditor P. A.

68 UNITED STATES OF AMERICA, *State of Illinois.*

No. 17. Concord Township Railroad Bond. $1,000.

[Written across the face in red ink:] One thousand dollars.

Know all men by these presents that the Township of Concord, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said Township of Concord promises to pay to the bearer at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly, on the first day of June in each year, at the Mechanics' National Bank of the City of Chicago, upon presentation
and delivery of the warrants or coupons severally hereto an-
69 nexed, until the payment of the said principal sum. This
bond is issued under and by virtue of a law of the State of Illinois to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of said Township of Concord is hereby pledged for the payment of said principal sum and interest as aforesaid.

In witness whereof the supervisor and clerk of said Township of Concord have subscribed this bond this first day of June, one thousand eight hundred and seventy.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*
[2 50-cts rev. stamps.]

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *October 20th*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been reg-

70 istered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor, P. A.

71 To the admission of which said three papers, and each of them, in evidence the defendant, by its counsel, then and there objected upon the ground that there was a variance between the same and the bonds described in the declaration in this case, and because there were erasures and interlineations on the face of the said papers offered in evidence which were unexplained, and because the same were executed and delivered without the authority of the defendant and are void; which objections were overruled by the court, and the defendant then and there duly excepted to said ruling of the court.

Said plaintiff also offered and read in evidence 21 papers, purporting to be interest coupons of said Town of Concord, which are as follows:

72 Concord Township Railroad Bond.

$100 Interest warrant. No. 15.

On the first day of June, 1875, the Township of Concord, Iroquois county, State of Illinois, will pay **(4)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

(Endorsed:) 22977.

73 Concord Township Railroad Bond.

$100 Interest warrant. No. 15.

On the first day of June, 1876, the Township of Concord, Iroquois county, State of Illinois, will pay **(5)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

74 Concord Township Railroad Bond.

$100 Interest warrant. No. 15.

On the first day of June, 1877, the Township of Concord, Iroquois county, State of Illinois, will pay **(6)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

75 Concord Township Railroad Bond.

$100 Interest warrant. No. 15.

On the first day of June, 1878, the Township of Concord, Iroquois county, State of Illinois, will pay **(7)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

76 Concord Township Railroad Bond.

$100. Interest warrant. No. 15.

On the first day of June, 1879, the Township of Concord, Iroquois county, State of Illinois, will pay **(8)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

77 Concord Township Railroad Bond.

$100. Interest warrant. No. 15.

On the first day of June, 1880, the Township of Concord, Iroquois county, State of Illinois, will pay **(9)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

78 Concord Township Railroad Bond.

$100. Interest warrant. No. 15.

On the first day of June, 1881, the Township of Concord, Iroquois county, State of Illinois, will pay **(10)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

79 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1875, the Township of Concord, Iroquois county, State of Illinois, will pay **(4)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

(Endorsed:) 22977.

80 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1876, the Township of Concord, Iroquois county, State of Illinois, will pay **(5)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

81 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1877, the Township of Concord, Iroquois county, State of Illinois, will pay **(6)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

82 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1878, the Township of Concord, Iroquois county, State of Illinois, will pay **(7)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

83 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1879, the Township of Concord, Iroquois county, State of Illinois, will pay **(8)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

84 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1880, the Township of Concord, Iroquois county, State of Illinois, will pay **(9)** to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

85 Concord Township Railroad Bond.

$100. Interest warrant. No. 16.

On the first day of June, 1881, the Township of Concord, Iroquois county, State of Illinois, will pay (**10**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

86 Concord Township Railroad Bond.

$100. Interest warrant. No. 17.

On the first day of June, 1875, the Township of Concord, Iroquois county, State of Illinois, will pay (**4**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

(Endorsed:) 22977.

87 Concord Township Railroad Bond.

$100. Interest warrant. No. 17.

On the first day of June, 1876, the Township of Concord, Iroquois county, State of Illinois, will pay (**5**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

88 Concord Township Railroad Bond.

$100 Interest warrant. No. 17.

On the first day of June, 1877, the Township of Concord, Iroquois county, State of Illinois, will pay (**6**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

89 Concord Township Railroad Bond.

$100. Interest warrant. No. 17.

On the first day of June, 1878, the Township of Concord, Iroquois county, State of Illinois, will pay (**7**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk.*

G. R. DUNNING, *Supervisor.*

90 Concord Township Railroad Bond.

$100. Interest warrant. No. —.

On the first day of June, 1879, the Township of Concord, Iroquois county, State of Illinois, will pay (**8**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk*.

G. R. DUNNING, *Supervisor*.

91 Concord Township Railroad Bond.

$100. Interest warrant. No. 17.

On the first day of June, 1880, the Township of Concord, Iroquois county, State of Illinois, will pay (**9**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk*.

G. R. DUNNING, *Supervisor*.

92 Concord Township Railroad Bond.

$100. Interest warrant. No. 17.

On the first day of June, 1881, the Township of Concord, Iroquois county, State of Illinois, will pay (**10**) to the bearer one hundred dollars at the Mechanics' National Bank of the City of Chicago, being one year's interest on bond numbered as above.

E. D. BOONE, *Clerk*.

G. R. DUNNING, *Supervisor*.

93 To the admission of which said 21 papers, and each of them, in evidence the defendant, by its counsel, then and there objected, upon the ground that there was a variance between the same and the interest coupons described in the said declaration, and because there were erasures and interlineations on their face which were unexplained, and because the same were executed and delivered without the authority of said Town of Concord and are void.

Which objections were overruled by the court, and the defendant, by its counsel, then and there duly excepted to said ruling of the court.

Proof was also given in the case tending to show that plaintiff purchased said bonds and coupons in open market, in the city of Boston, in the State of Massachusetts, before the same, or any of them, were due, and paid full value therefor, without notice of any defense thereto or that the conditions on which [they] were to be issued had not been complied with.

94 And the defendant, to maintain the issues on its behalf, produced W. B. Simonds, a witness duly sworn, who gave evidence tending to show that he is acquainted with the line of the Chicago, Danville & Vincennes railroad, with reference to the village of Concord or township of Concord, and that said railroad does not touch either the township of Concord or Sheldon; that the nearest point of said railroad to said Concord township is four miles west of the northwest corner in the township of Middleport, and the nearest point to Sheldon township is about the same distance west; that said road is about eight and one-half miles away from the village of Iroquois, formerly called the village of Concord, and about three-quarters of a mile further from the village of Sheldon; that said railroad company never built any track or line through the townships mentioned; that said railroad company has never run any train through the township of Concord or Sheldon so far as the witness has any personal knowledge, and that the witness resided in the immediate vinicinity of the village of Concord ever since the year 1864; that there never was any vote taken in the township of Concord on the subject of issuing bonds, except as shown by the records set forth in the agreement of facts in evidence in this case; that there was no vote taken to issue bonds to pay the
donation to the Chicago, Danville & Vincennes Railroad
95 Company made by said township of Concord.

Objection to all this testimony on the ground that the record evidence, embraced in facts admitted, is conclusive upon the town, and it is bound by the action of its supervisor and town clerk, who certify to facts contained in stipulation.

On cross-examination witness said that there was a railroad through both the towns of Concord and Sheldon, but that it was not constructed by the Chicago, Danville & Vincennes Railroad Company; that the Chicago, Danville & Vincennes Railroad Company might have run a single train over said road, but that witness never saw or heard of it.

Said defendant also produced evidence tending to show that the total value of real and personal property in said town of Concord for the year 1869 was $173,897, and for the year 1871 the total value of real and personal property in said town was $156,014, as shown by the assessments had on the first day of May, in the year aforesaid, in the assessor's books for those years.

(Objected to by plaintiff as immaterial and irrelevant.)

Said defendant also gave evidence tending to show that the bonds Nos. 15, 16, and 17, mentioned in the foregoing agreement of facts, were and are a part of a series of 25 bonds, numbered 1 to 25, both
inclusive, each for the sum of $1,000, and that the other
96 bonds of the same series were issued and delivered to the
Chicago, Danville & Vincennes R. R. Co. on the 9th day of October, 1871, at the same time and pursuant to the same proceedings as were said bonds Nos. 15, 16, and 17.

Said defendant also offered and read in evidence a copy of a certain bill of complaint filed in the circuit court of Iroquois county, Illinois, on the 26th day of September, 1872, in a certain cause wherein Samuel Warrick *et al.* were complainants and the Chicago, Danville & Vincennes R. R. Co. *et al.*, defendants, which said bill sets forth the issuing of the 25 bonds aforesaid, and that John Henry Fairbanks was the owner of the bonds Nos. 15, 16, & 17 set forth in the declaration in this case, and prays for an injunction against the collection of said bonds upon the ground that they were issued without authority of said town of Concord and that they were void.

Also a copy of an answer of John Henry Fairbanks to said bill of complaint filed in said cause on the 2nd day of November, 1872, in which said answer said Fairbanks admits that he is the owner of said bonds Nos. 15, 16, & 17, & avers that he is a *bona fide* holder of them for value and without notice of any irregularity, and insists that they were properly issued, &c.

(Objected to by plaintiff.)

Also a copy of the decree entered in said cause on the 27th day of February, 1878, which is as follows:

(Objected to by plaintiff.)

97 In Circuit Court. February Special Term, A. D. 1878.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS,
Iroquois County, } *ss:*

Pleas before the Honorable N. J. Pillsbury, one of the judges of the eleventh judicial circuit of the State of Illinois and presiding judge of the circuit court of Iroquois county, in the State aforesaid, and at a special term thereof begun and held at the court-house in the city of Watseka, in said county, on the second Monday (being the 10th day) of February, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independance of the said United States the one hundred and second.

Present: Honorable N. J. Pillsbury, presiding judge; Tracy B. Harris, State's attorney; Jacob C. Shear, sheriff.

Attest:

JOHN W. RIGGS, *Clerk.*

98 Be it remembered that on the 27th day of February, A. D. 1878, the same being one of the regular days of the February special term of said court for A. D. 1878, and said court being duly organized and sitting for the regular transaction of business, the following proceedings were had and entered of record, viz:

99 *Bill for Injunction to Restrain the Collecting of Taxes.*

In the Circuit Court. To the November Term, 1877. In Chancery.

SAMUEL WARRICK, GEORGE R. WRIGHT, and JOHN B. HILL

vs.

THE CHICAGO, DANVILLE & VINCENNES RAILROAD COMPANY, GEORGE R. Dunning, Supervisor; Edward D. Boone, Town Clerk; Peter V. Trownfelter, Collector of Taxes for said Town of Concord, and their Successors in Office, and the Unknown Holders of the Bonds Numbered 15, 16, and 17 aforesaid, by the name and description of the Unknown Owners and Holders [of] Three Bonds. John Henry Fairbanks, of Winchendon, in the State of Massachusetts, and the Savings Bank of Portsmouth, in the State of New Hampshire, claims to own the bonds numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), and twenty-five (25).

STATE OF ILLINOIS, } *ss:*
Iroquois County, }

100 And this cause having, at a former term of this court, *having* been at issue, and having been called in its order for trial, and the court having heard the pleadings in said cause read, and found from the inspection of the pleading- that all the respondents *was* in court and had been for more than ten days before the first day of the term of the court at which it was heard by the court, and the court having heard all the testimony offered in said cause by all the parties to said proceedings, both on the part of the complainants and *that* all the defendants that had answered, and caused the defaults of those that had not answered to be entered in said cause, and also caused all the testimony offered by both and all parties to this record to be prepared and carefully copied by a short-hand reporter and caused the same to be put on file in this case as part of the record in this cause, and now, on this day, the court, having come to a conclusion in this matter, doth find the following facts to exist from the proof taken and heard by the court in this cause as follows, to wit:

101 First. The court finds that the Town of Concord, in the county of Iroquois, and State of Illinois, is a corporation created under the constitution and laws of the State of Illinois with full power to contract and be contracted with, and that it was such a corporation before the first day of November, A. D. 1869, and that they could act only through and by means of agents, by whom only it could act, and that its agents, known to the law, was one supervisor, one town clerk, one treasurer, one town collector of taxes, etc.

Second. The court doth find that on the 20th day of November, A. D. 1869, *that* there was an election held in said town of Concord, in the county of Iroquois and State aforesaid, to donate or not donate the sum of twenty-five thousand dollars to the Chicago, Danville and Vincennes Railroad Company, to be paid by the said town by the assessments and collection in one and two annual installments, to be donated to the Chicago, Danville and Vincennes Railroad Company, provided said company build or make said railroad through the village of Concord, in said town of Concord, and the town of Sheldon, in Sheldon township, in said said county and State aforesaid.

102 Third. The court doth find that a majority of the vote-s of said town that voted on said question at said election held on the 20th day of November, 1869, voted for said donation on the condition named in said petition asking for the call of the said election to be holden, and which was holden on the 20th day of November, A. D. 1869.

Fourth. The court doth find that at the annual town meeting to be held on the Tuesday after the first Monday of the month of April, A. D. 1870, *that* the question of making of the donation was again submitted to the legal voters of said town, and that a majority of the said voters that voted at the said town meeting, which the court finds from the proof in the case to be a majority of all the legal voters of said town — voted at said April annual town meeting, A. D. 1870, voted against the making of said donation to the said railroad company or any part of the same or any other sum whatever.

Fifth. The court doth find that at the time of the taking of the vote at the annual April town meeting, A. D. 1870, *that* said railroad company had not expended one cent on the said railroad in
103 the corporate limits of the said town of Concord, in said county of Iroquois and State of Illinois.

Sixth. The court doth find that the said Chicago, Danville & Vincennes Railroad Company did not at any time before or since the date of the issuing of the bonds and coupons in controversy in this — could build the Chicago, Danville and Vincennes railroad through the said town of Concord, in the county and State aforesaid at all.

Seventh. The court doth find that on the 30th day of June, A. D. 1870, *that* the voters of the said Town of Concord, in said county aforesaid, at a special election, held at a school-house in said Town of Concord, and that at said place and on said day a majority of all the voters of the said town again voted on said question, and voted to not donate to the said railroad company the said sum of twenty-five thousand dollars, or any other sum of money for any purpose whatever.

Eight-. The court doth further find that some time in the fall of the year 1870 *that* the acting supervisor and town clerk of said Town of Concord aforesaid issued and delivered to some *and* who claimed to represent the said Chicago, Danville and Vin-
104 cennes Railroad Company the bonds of the Town of Concord, due ten years after their date, with ten per cent. interest from date, and due and payable at the end of each year.

Ninth. The court doth further find that about the first day of June, A. D. 1871, *that* the acting supervisor and the acting town clerk of the said Town of Concord aforesaid took up the said twenty-five thousand dollars of bonds so as afororesaid issued and delivered, and in their stead issued new bonds of said town in lieu thereof to the amount and sum of twenty-five thousand dollars, which last set of bonds is the same identical bonds that *is* in controversy in this cause, and the collection thereof is by the order of the court in this cause enjoined.

Tenth. The court doth find that the said issue of the bonds by the said supervisor and town clerk of said Town of Concord aforesaid was made and done by them without authority of law or power in them vested to issue the said bonds, or either or any of them, and that there was not at any time any authority vested in them to
issue the said bonds or coupons, or any of them, at all by a
105 vote of the legal voters of the said Town of Concord, and
that the records of the said Town of Concord furnished ample and conclusive evidence of want of authority vested in them, and that the respondents, the owners of the said bonds, *was* bound to take notice of the want of authority vested in the said supervisor and town clerk to issue or deliver the said bonds, or either of them, or the coupons attached to said bonds, or either of them.

Eleventh. The court doth further find that on the 3d day of January, A. D. 1872, *that* Samuel Warrick, George R. Wright, and John B. Hill, [who] was residents and tax-payers of the town of Concord aforesaid, filed their bill in chancery in the circuit court in the county of Iroquois and State of Illinois, together with an order for an injunction, and the court doth further find that the clerk of the said court did issue the said injunction as by the judge of the said circuit court —, and that said injunction was and is in part as follows, to wit : "From collecting or attempting to collect the interest or principal of the bonds issued by said town officers of the said Town of Concord in aid of the said Chicago, Danville and Vincennes Railroad Company
or from the taxable property of said Town of Concord, Iro-
106 quois county, and State of Illinois, and especially from the
property of the complainants herein, in whole or in part, and *that* the unknown owners and holders of the said bonds and coupons, and each and all of them, from selling, transferring, or assigning the said bonds aforesaid, and from, in any manner, taking any step to collect the said bonds or the interest coupons that *was* attached to said bonds, or any part of them, or either of them.

Twelfth. And the court doth find that the Town of Concord did not legally and lawfully issue or cause to be issued the said bonds or the coupons attached thereto, and that the said bonds and coupons *was*, at the time they *was* issued and delivered, together with the coupons attached, *was* void, and *is* now void, and the court doth find that the respondents to this suit and the holders of the said bonds and coupons, with full and *full* legal notice of the facts that the said Town of Concord had not at any time authorized the said town officers of said town to issue or deliver the said bonds and coupons, or in — their hands, void and not binding upon the Town of Concord, nor upon the tax-payers of the said town, — is

not bound by the said bonds or the coupons so issued;
107 and the court doth also find that the complainants had,
before the day this cause was heard, *had* dismissed their bill
as to the Kankakee and Indiana Railroad Company, and the court
doth order that as to the said Kankakee and Indiana Railroad Com-
pany *that* the complainants pay the costs by them made by the
dismissal of their said bill as to them; and the court doth now, upon
the full hearing and upon full and ample consideration of all the
facts and circumstances, *doth* find that the injunction heretofore
issued in this cause was properly issued, and the court doth also order
and direct that the said injunction be, and the same is, made per-
petual, and that the respondents are each and all of them perpetually
enjoined from doing anything named in the original and amended
bill that *are* asked to be enjoined from as follows, to wit: the
Chicago, Danville and Vincennes Railroad Company from claiming
anything under the vote of the said Town of *the said Town of* Con-
cord, held on the 20th day of the month of November, A. D. 1869,
to donate the sum of twenty-five thousand dollars to the Chicago,
Danville and Vincinnes Railroad Company as *is* the said
108 bonds and coupons supposed to exist; that George R. Dun-
ing, supervisor of said town, and his successors in office; Ed-
ward D. Boone, town clerk of the Town of Concord and his successor
in office, and Peter Frownfelter, collector of taxes in and for said Town
of Concord, and his successor in office of said town, be, and each of
them be, and they are, perpetually enjoined from issuing or deliver-
ing to any person or persons or corporation any evidence of indebted-
ness of said town by virtue of the vote stated by this decree and the
pleadings in this cause to have taken place in said town on the 20th
day of November, A. D. 1869, to donate twenty-five thousand dol-
lars, and they, each and all of said town officers, be, and their suc-
cessors in office be, and they are, hereby perpetually enjoined from
at any time assessing or causing to be assessed, or served, or collected,
or from attempting to collect, or cause to be collected from the tax-
able property of the tax-payers of the said property of the said
Town of Concord, and especially from the complainants, Samuel
Warrick, George R. Wright, and John B. Hill, the complain-
ants, for the purpose of paying the said bonds or coupons that
was issued by the supervisor and town clerk of the said
109 Town of Concord, and delivered to the said before-named
Chicago, Danville and Vincennes Railroad Company by de-
livering them to Joseph E. Young, as agent of the said last-named
railroad company, and that John Henry Fairbanks, the holder and
owner of the bonds, with their coupons, numbered 15, 16, and 17,
perpetually enjoined from collecting or attempting to collect the
said three bonds or the coupons from the said Town of Concord or
from the complainants, as tax-payers of said Town of Concord, and
that the Savings Bank of Portsmouth, in the State of New Hampshire,
the owners and — of the bonds in controversy in this cause and num-
bered as follows, to wit: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 20,
21, 22, 23, 24, and 25, be, and each of them, respectively, — enjoined
from collecting or attempting to collect the said bonds and coupons

last named from the Town of Concord or from the complainants, or
either of them, or from their property that is or may be taxable in
said Town of Concord, and that the unknown*ed*-named non-resident
owners and holders of the said bonds and the coupons attached to
bonds numbered 14 and 18, as part of the said twenty-five bonds,
making the said twenty-five thousand dollars, issued and de-
110 livered by the said George R. Dunning, supervisor, and Ed-
ward D. Boone, town clerk, and that by the proof to be dated
on the first day of June. A. D. 1871, and that each and all of the respondents named be, and each is hereby, perpetually enjoined from selling, transferring, or collecting or attempting to collect any or either of the bonds or coupons named in this decree and the pleadings in said cause, and the court doth also find, order, adjudge and decree that the respondents, the said town officers and their successors in office, be perpetually enjoined as prayed for in the original and amended bill in this cause, and that they pay the costs and charges and expenses of this litigation, to be paid out of the town funds of the said town, to be audited as other town expenses, and that this decree be entered at this term of this court as a final decree in this cause.

N. J. PILLSBURY, *Judge.*

111 I, John W. Riggs, clerk of the circuit court of Iroquois county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a decree rendered in a certain cause once pending in said court, on the chancery side thereof, wherein Samuel Warrick and others were plaintiffs and The Chicago, Danville and Vincennes railroad and others were defendants, as the same appears of record in order-book S, page 541. I further certify that I am the keeper of the records and the seal thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Watseka, this 13th day of January, A. D. 1882.

JOHN W. RIGGS, *Clerk.*

112 The foregoing is the substance of all the evidence given or offered to be given by either of the parties upon the trial of said cause.

And thereupon the court found the issues specially in favor of said plaintiff, which finding is in the words and figures following, to wit:

113 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss*:

In the Circuit Court Thereof. July Term, A. D. 1883.

SYLVIA J. ROBINSON }
vs. } Assumpsit.
THE TOWN OF CONCORD. }

This cause having by agreement of parties been submitted to the court for trial without the intervention of a jury, the court, at the request of said defendant's counsel, makes a special finding of the facts as follows:

First. That the statements set forth in the agreement of facts filed in this case are facts in the case.

Second. That the several acts of the Legislature of Illinois offered in evidence were enacted in a constitutional manner at the several
times, as shown by the evidence.
114 That the act of March 7, 1867, was sufficient authority for
the issue of the bonds irrespective of the curative acts of
1869.

Third. That the three papers offered in evidence by the plaintiff purporting to be the bonds of the defendant, the Town of Concord, and the twenty-one papers purporting to be interest coupons were executed by G. R. Dunning, the then supervisor, and E. D. Boone, the then clerk of said Town of Concord, and that their signatures thereto are genuine.

That the plaintiff became the owner of said bonds May 9th, 1873, paying therefor $3,000 *from* George O. Marcy, who was the agent for sale of said bonds in open market, in good faith before maturity and without notice of any defence to same.

Fourth. That the Chicago, Danville & Vincennes railroad
115 does not touch either the township of Concord or Sheldon;
that the nearest point of said railroad to said Concord township is four miles west of the northwest corner in the township of Middleport, and the nearest point to Sheldon township is about the same distance west; that said road is about eight and one-half miles away from the village of Iroquois, formerly called the village of Concord, and about three-quarters of a mile further from the village of Sheldon; that said railroad company never built any track or line through the townships mentioned; that said railroad company has never run any train through the townships of Concord or Sheldon; that there never was any vote taken in the township of Concord on the subject of issuing bonds, except as shown by the records set forth in the agreement of facts in evidence in this case;
that there was no vote taken to issue bonds to pay the
116 donation to the Chicago, Danville & Vincennes Railroad
Company made by said Township of Concord.

That before said bonds were registered in the office of the auditor of Illinois the supervisor of said town filed in said auditor's office an affidavit alleging that all the conditions precedent to the registering of said bonds had been duly complied with, including the building of the railroad; that said bonds were entitled to registry; from which the court finds that the town is estopped from alleging that the road was not built.

Fifth. That the total assessed value of the real and personal property in said Town of Concord for the year 1869 was $173,897, and for the year 1871 $156,014.

Sixth. That the bonds Nos. 15, 16, and 17, mentioned in said
agreement of facts, were and are a part of a series of 25 bonds
117 numbered 1 to 25, inclusive, each for the sum of $1,000, and
that the other bonds of the same series were issued and deliv-

ered to the Chicago, Danville & Vincennes R. R. Co. on or about the 9th day of October, 1871, at the same time and pursuant to the same proceedings as were said bonds Nos. 15, 16, and 17.

Seventh. That a bill of complaint and answer were filed and a decree entered in the circuit court of Iroquois county, as shown by the bill of exceptions filed herein.

Eighth. That the plaintiff was and is a holder of the three bonds and twenty-one interest coupons offered in evidence herein in good faith for value paid therefor before the maturity thereof. Wherefore the court found the issues for the plaintiff and assessed *her* damages against the defendant at sixty-three hundred and fifty dollars, and entered judgment against the defendant for that amount and costs of suit.

H. W. BLODGETT, *Judge.*

118 Endorsed: Filed August 1, 1883. Wm. H. Bradley, clerk.

119 To which finding of the court the said defendant, by its counsel, then and there duly excepted.

Whereupon said court rendered a judgment upon said finding in favor of said plaintiff, against said defendant, for the sum of sixty-three hundred and fifty dollars and costs of suit, to the entering of which said judgment the defendant, by its counsel, then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record, the defendant, by its counsel, tenders this its bill of exceptions, and prays that the same may be signed and sealed by the judge of the court before whom said cause was heard, in pursuance of law, which is done accordinnly.

H. W. BLODGETT, [SEAL.]
Judge.

Endorsed: Filed August 1, 1883. Wm. H. Bradley, clerk.

120 Afterwards, to wit, on the twenty-second day of September, A. D. 1883, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Supreme Court of the United States.

SYLVIA J. ROBINSON *vs.* TOWN OF CONCORD.

Know all men by these presents that we, the Town of Concord, a body corporate and politic, organized and existing under the laws of the State of Illinois, and James H. Karr, Samuel Warrick, John W. Young, James C. Kane, Jacob B. Strickler, John B. Hill, Anderson Tyler, and Elijah Karr, all residing in the said Town of Concord, in Iroquois county & State of Illinois, are held and firmly bound unto Sylvia J. Robinson, of Mechanic Falls, county of Androscoggin, in the State of Maine, in the sum of ten thousand dollars ($10,000.00), to be paid to the said Sylvia J. Robinson, her ex-

ecutors or administrators; to which payment, well and truly
121 to be made, we bind ourselves, and each of us, jointly and
severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this fifteenth day of Sep., A. D. 1883.

Whereas the above-named Town of Concord hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States in and for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-bounden Town of Concord shall prosecute its said writ of error to effect, and answer all costs and damages and promptly pay the amount of said judgment and interest thereon if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof the said Town of Concord has caused these presents to be subscribed by its supervisor and attested by its town clerk, and the other parties obligated have hereunto set their hands and seals.

W. B. SIMONDS, *Supervisor*.
J. F. FOX, *Clerk*.
122 JAMES H. KARR. [SEAL.]
SAMUEL WARRICK. [L. S.]
JOHN W. YOUNG. [L. S.]
JAMES C. KANE. [L. S.]
JACOB B. STRICKLER. [L. S.]
JOHN B. HILL. [L. S.]
ANDERSON TYLER. [L. S.]
ELIJAH KARR. [L. S.]

STATE OF ILLINOIS, } *ss:*
Iroquois County, }

James H. Karr, Samuel Warrick, John W. Young, James C. Kane, Jacob B. Strickler, John B. Hill, Anderson Tyler, and Elijah Karr, all residing in the Town of Concord, in said county and State, being severally sworn, depose and say, and each for himself saith: The said James H. Karr that he is worth eleven thousand dollars over and above all his debts and liabilities and owns unincumbered real estate in said county to the value of ten thousand dollars; the said Samuel Warrick that he is worth twenty-eight thousand dollars over and above all his debts and liabilities and owns unincumbered real estate in said county of the value of twenty-six thousand dollars, & the said John W. Young that he is worth ten thousand dollars over and above all his debts and liabilities and owns real estate in said county to the value of ten thousand dollars.

JAMES H. KARR.
123 SAMUEL WARRICK.
JOHN W. YOUNG.

Subscribed and sworn to before me this 15th day of September, A. D. 1883.

W. B. SIMONDS, *J. P.*

And the said James C. Kane that he is worth four thousand dollars over and above all his debts and liabilities and owns unincumbered real estate in said county to the value of three thousand dollars; and the said Jacob B. Strickler that he is worth eight thousand dollars over and above his debts and liabilities and owns unincumbered real estate in said county to the value of seven thousand five hundred dollars; and the said John B. Hill that he is worth seven thousand dollars over and above his debts and liabilities and owns unincumbered real estate in said county to the value of six thousand dollars; and the said Anderson Tyler that he is worth two thousand dollars over and above his debts and liabilities and owns unincumbered real estate in said county to the value of two thousand dollars; and the said Elijah Karr that he is worth ten thousand dollars over and above his debts and liabilities and
124 owns real estate in said county to the value of six thousand dollars.

JAMES C. KANE.
JACOB B. STRICKLER.
JOHN B. HILL.
ANDERSON TYLER.
ELIJAH KARR.

Subscribed and sworn to before me this 15th day of September, A. D. 1883.

W. B. SIMONDS, *J. P.*

Approved.
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed this 22d day of September, A. D. 1883. Wm. H. Bradley, clerk.

125 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Sylvia J. Robinson is the plaintiff and the Town of Concord is the defendant as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this third day of October, A. D. 1883.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

WM. H. BRADLEY, *Clerk.*

126 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is before you in said circuit court, between Sylvia J. Robinson, plaintiff, and The Town of Concord, defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said The Town of Concord, as by its complaint appears, and it *is* being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1883, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of August, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 108th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

WM. H. BRADLEY,
Clerk U. S. Circuit Court, Nor. Dist. of Ills.

[Endorsed:] Supreme Court of the United States. The Town of Concord, plaintiff in error, *vs.* Sylvia J. Robinson, defendant in errror. Writ of error. Copy deposited for the defendant in error in the clerk's office — U. S., northern district of Illinois.

127 UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

To Sylvia J. Robinson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1883, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein The Town of Concord is the plaintiff in error and you, the said Sylvia J. Robinson, are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, district judge, this twenty-second day of September, in the year of our Lord one thousand eight hundred and eighty-three.

H. W. BLODGETT, *Judge.*

Service of above citation acknowledged by copy this 24th day of Sept., 1883.

THOMAS S. McCLELLAND,
GEORGE A. SAUNDERS,
Atty's for Robinson.

[Endorsed:] Supreme Court of the United States. The Town of Concord, plaintiff in error, *vs.* Sylvia J. Robinson, defendant in error. Citation to October term, A. D. 1883.

128 *Assignment of Errors.*

In the Supreme Court of the United States. October Term, A. D. 1883.

THE TOWN OF CONCORD, Plaintiff in Error,
vs.
SYLVIA J. ROBINSON, Defendant in Error.

Error to the circuit court of the United States for the northern district of Illinois.

And now the said Town of Concord, plaintiff in error, comes and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. The court below erred in admitting in evidence against the objections of plaintiff in error the three papers, and each of them, purporting to be the bonds of said Town of Concord, because there was and is a variance between the same and the bonds described in the declaration, and because there were erasures and interlineations on the face of said three papers offered in evidence, and each of them, which were unexplained, and because the same were executed and delivered without the authority of said Town of Concord, and are void in law.

2. The court below erred in admitting in evidence against the objections of plaintiff in error the twenty-one papers, and each of them, purporting to be interest coupons of said Town of Concord, for the same reasons stated in the foregoing assignment of error against the admission in evidence of said three papers purporting to be the bonds of said Town of Concord.

3. The court below erred in finding as a matter of fact that the signatures to the three papers offered in evidence purporting to be the bonds and to the twenty-one papers purporting to be the interest coupons of said Town of Concord were genuine, because there was no evidence whatever offered of the genuineness of said signatures, or any of them.

129 4. The court below erred in finding as a matter of law that defendant in error became the owner of said bonds without notice of any defense thereto, because in law she had constructive notice of a good defense thereto.

5. The court below erred in finding that the plaintiff in error is estopped from alleging that said railroad was not built

6. The court below erred in entering the judgment aforesaid in manner aforesaid, because of the errors mentioned in the foregoing assignments of error, and, further, because it appears from the evidence that said Town of Concord had no authority to issue the bonds aforesaid, or any of them, and that said bonds were of no legal force or effect whatever, and because there is a variance between the writ of summons and the declaration in said cause.

7. The said judgment is contrary to the law in the case.

8. The said judgment is contrary to the law and the evidence in the case.

Wherefore and for divers other errors apparent upon the face of record and proceedings aforesaid said plaintiff in error prays that said judgment may be reversed, &c.

L. H. BISBEE,
JOHN P. AHRENS,
Attorneys for Plaintiff in Error.

Endorsed on cover: N. Illinois C. C. U. S. No. 161. The Town of Concord, plaintiff in error, *vs.* Sylvia J. Robinson. Filed 12th October, 1883.

6. The court below erred in entering the judgment aforesaid in manner aforesaid, because of the errors mentioned in the foregoing assignments of error, and, further, because it appears from the evidence that said Town of Concord had no authority to issue the bonds aforesaid, or any of them, and that said bonds were of no legal force or effect whatever, and because there is a variance between the writ of summons and the declaration in said cause.

7. The said judgment is contrary to the law in the case.

8. The said judgment is contrary to the law and the evidence in the case.

Wherefore and for divers other errors apparent upon the face of record and proceedings aforesaid said plaintiff in error prays that said judgment may be reversed, &c.

L. H. BISBEE,
JOHN P. AHRENS,
Attorneys for Plaintiff in Error.

Endorsed on cover: N. Illinois C. C. U. S. No. 161. The Town of Concord, plaintiff in error, *vs.* Sylvia J. Robinson. Filed 12th October, 1883.

121-165

FILED
JAN 3 1887
JAMES H. McKENNEY,
CLERK.

No. 161.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

THE TOWN OF CONCORD, *Plaintiff in Error,* *vs.* SYLVIA J. ROBINSON, *Defendant in Error.*	In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT

FOR PLAINTIFF IN ERROR.

LEWIS H. BISBEE,
JOHN P. AHRENS,
HENRY DECKER,
ATTORNEYS FOR PLAINTIFF IN ERROR.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

IN THE

Supreme Court of the United States.

October Term, A. D. 1886.

No. 161.

THE TOWN OF CONCORD,
Plaintiff in Error,
vs.
SYLVIA J. ROBINSON,
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF FACTS.

On the first day of October, 1871, the Town of Concord (plaintiff in error) issued twenty-five bonds, each of the denomination of one thousand dollars, payable June 1, 1881, with ten interest coupon or interest notes attached to each of such bonds of one hundred dollars each.

The form of the bond is as follows:

"UNITED STATES OF AMERICA, STATE OF ILLINOIS.

"Concord Township Railroad Bond No. 15.

"*Know all men by these presents*, that the Township of Concord, in the county of Iroquois and State of Illinois, acknowledge itself to owe and be indebted in the sum of one thous-

"and dollars, lawful money of the United States of America, "which sum of money the said township of Concord promises "to pay to the bearer at the Mechanics' National Bank, "Chicago, on the first day of June, in the year one thousand "eight hundred and eighty-one, with interest thereon at the "rate of ten per cent. per annum, which interest shall be pay-"able yearly on the first day of June in each year at the "Mechanics' National Bank, of the city of Chicago, upon pre-"sentation and delivery of the warrants or coupons severally "hereto annexed, until the payment of the said principal sum.

"This Bond is issued under and by virtue of a law of the "State of Illinois to *authorize cities, towns or townships lying "within certain limits to appropriate moneys and levy a tax to "aid the construction of the Chicago, Danville and Vincennes "railroad*, and the faith of said Township of Concord is here-"by pledged for the payment of said principal sum and interest "aforesaid. In witness whereof, the supervisor and clerk of "said Township of Concord have subscribed this bond this "first day of October, one thousand eight hundred and seventy-"one.

"E. D. BOONE, *Clerk.*
"G. R. DUNNING, *Supervisor.*"

The form of each coupon was as follows:

"CONCORD TOWNSHIP RAILROAD BOND.
"INTEREST WARRANT.

"On the first day of June, 1881, the Town of Concord, Iro-"quois county, State of Illinois, will pay the bearer one "hundred dollars at the Mechanics' National Bank of the city "of Chicago, being one year's interest on bond numbered as "above.

"E. D. BOONE, *Clerk.*
"G. R. DUNNING, *Supervisor.*"

The only vote of the towns relating to the issue of these bonds was as follows:

Copy of call for special election of 20th day of November, A. D., 1869.

The undersigned town officers and twelve freeholders of the town of Concord, in the county of Iroquois and State of Illinois, do state that a special town meeting is necessary to the interests of said town for the purpose of voting a tax to be levied on the taxable property of said town to the aggregate amount of twenty-five thousand dollars, to be assessed and collected in two annnal installments; to be donated to the company making the Vincennes, Danville and Chicago railroad, provided said company build or make said road through the village of Concord, in said town of Concord, and the town of Sheldon, in Sheldon township. We would therefore request that immediate notice be given thereof, and that said meeting be held on the 20th day of November, A. D. 1869.

Witness our hands this 9th day of November, A. D. 1869.

JESSE R. EASTBURN, *Supervisor.*
EDWARD D. BOONE, *Town Clerk.*
(In pencil) EDWARD D. BOONE and
A. O. WHITMAN,
Justice of the Peace.

And twelve freeholders also sign this call.

Copy of minutes of election:

Minutes of a special town meeting held pursuant to legal notice posted ten days previous to said meeting in five of the most public places in the town of Concord as required by law, in the school-house, in the village of Concord, on the twentieth day of November, A. D. 1869, for the purpose of voting for or against levying a tax on the taxable property of said town of Concord, amounting in the aggregate in two years to the sum of twenty-five thousand dollars, to be donated to the Vincennes, Danville and Chicago Railroad Company, provided said company run said railroad through the villages of Concord and Sheldon, and take such measures in pursuance of law as may be considered necessary to carry the objects of said meeting into effect.

Which meeting was called to order at the hour of nine o'clock A. M., by Edward D. Boone, town clerk, and on motion of William Felton, Jesse R. Eastburn was chosen moderator to preside at said meeting, who, being duly sworn, according to law, entered upon the discharge of the duties of his office. After the organization of the meeting and proclamation made according to law the polls were opened and the electors proceeded to vote, as is the law and custom at town meetings, until the close of the polls, and after canvassing the votes we found the result to be: For the tax had sixty-six votes, against the tax had fifty-three votes.

Meeting adjourned *sine die*.

JESSE R. EASTBURN, *Moderator*.
EDWARD D. BOONE, *Town Clerk*.

On the 20th day of June, 1870, the following notice of acceptance of the donation was lodged with the town clerk of Concord:

To the supervisor and town clerk of the town of Concord, in the county of Iroquois and State of Illinois:

Whereas, said town of Concord did, on the 20th day of November, A. D. 1869, vote to donate the sum of twenty-five thousand dollars to aid the Vincennes, Danville and Chicago Railroad Company to construct their railroad;

Now, therefore, you are hereby notified that said railroad company do accept said offer and agreement of said town to aid them in the construction of their railroad, and you are further notified that they will construct their railroad *through or into said town of Concord* in pursuance to the terms and conditions voted by said town, and will demand and claim the amount of money so voted by said town.

Dated 20th day of June, 1870.

BLADES & KAY,

Att'ys for Chicago, Danville and Vincennes Railroad Co.

On the 30th day of May, 1870, the following call was made for an election to vote for $20,000 to appropriate to the Kankakee and Indiana Railroad Company, and TO RESCIND THE VOTE OF NOVEMBER 20, 1869, granting the donation of $25,000 to the Chicago, Danville and Vincennes Railroad Company.

To the town clerk of the town of Concord, in the county of Iroquois and State of Illinois:

The undersigned citizens, freeholders, legal voters and taxpayers of said town request you to call an election according to law for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty thousand dollars to the capital stock of the Kankakee and Indiana Railroad Company, said twenty thousand dollars to be in lieu of the twenty-five thousand (dollars) voted to the Chicago, Danville and Vincennes Railroad Company, and also to vote for rescinding the vote of the twentieth day of November, A. D. 1869, of twenty-five thousand dollars to the Chicago, Danville and Vincennes Railroad Company on the conditions that the railroad of said Kankakee and Indiana Railroad Company shall pass through the village of Concord, within eighty rods of the Concord bridge, and (a) good and sufficient depot be built in the village of Concord, and also a good side-track in the same, the road to be completed in one year from this date and the cars running on the same, the company to take township bonds running ten years at ten per cent. interest per annum at par value in full of said twenty thousand dollars, said bonds to commence bearing interest from the date of the completion of said road and the running of the cars thereon; said company failing to comply with the above conditions the promises above stated are to be null and void.

Dated May 30, 1870.

(Signed) WM. FELTON, *Supervisor*,
EDWARD D. BOONE, *Town Clerk*,

And twelve freeholders.

Notice of election pursuant to foregoing call:

"An election will be held at the schoolhouse, in the village "of Concord, on Thursday, the 30th day of June, A. D. 1870, "to vote for or against subscribing $20,000 to the Kankakee "and Indiana R. R. Company, and rescinding the vote donat-"ing $25,000 to the Chicago, Danville and Vincennes R. R. "Company, cast at an election held on the 20th day of No-"vember, 1869, on condition that said Kankakee and Indiana "R. R. Company run their said railroad from Lafayette, In-"diana, to Kankakee City, Illinois, through the town of Con-"cord, in the township of Concord, Iroquois county, and State "of Illinois, within eighty rods of the bridge across the Iroquois "river at said town of Concord, and build a side-track and a "good and sufficient depot in said town within one year from "the date of this election, to wit.: the 30th day of June, 1870, "and to have the cars running the whole route in the same "time; and the said $20,000 all to be paid in township bonds "bearing ten per cent. interest per annum in favor of said com-"pany in full of said subscription in ten years from the date of "the completion of said railroad and running of the cars "thereon.

"Dated this 30th day of May, 1870.

"EDWARD D. BOONE, *Town Clerk*."

Minutes of meeting held June 30, 1870, pursuant to foregoing notice:

IROQUOIS COUNTY, STATE OF ILLINOIS.

Meeting called to order by E. D. Boone, town clerk. On motion John B. Hill was chosen moderator, who, being duly sworn according to law, entered upon the duties of his office. E. D. Boone was sworn as clerk of said election.

After an address by Dr. Nott and further remarks by E. D. Boone, the election proceeded until six o'clock P. M. Polls closed after proclamation, and the presiding officers proceeded to canvass the polls. The following is the statement of the result of the canvass of votes, as publicly canvassed by the presiding officer at said election: For subscription had ninety-two votes; against subscription had twenty-eight votes; the whole number of votes cast at said election being one hundred and twenty, and the whole number of votes of the township of Concord being one hundred and sixty-nine, according to the register recently taken by the township board of registers, June, 1870; consequently the ninety-two votes for subscription, being a clear majority of the whole of the township, entitled it to all the benefits of the act of 1869 in relation to revenue, railroad tax and registry of bonds, etc., etc.

JOHN B. HILL, *Moderator*.
EDWARD D. BOONE, *Town Clerk*.

The legislative authority, for issuing the bonds, if any existed, must be gathered from some one of the four acts set out in full in the record (pages 16 to 25).

The only material part of the act of March 7, 1867 (Rec., 16), which is the act referred to in the bonds by its title are as follows:

An act to authorize cities, towns or townships lying within certain limits to appropriate money and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad.

SECTION 1. Be it enacted by the people of the state of Illinois, represented at the general assembly, That all incorporated towns and cities, and towns acting under the township organization law, which lie wholly or partly within twenty miles of the east line of this state, and also between the city of Chicago and the southern boundary of Lawrence county, be, and the same are hereby, severally authorized to appropriate such sum of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town, or township, respectively; provided, however, that the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns, or cities at a regular, annual, or special meeting by giving at least ten days' notice thereof, and a vote shall be taken thereon by a ballot at the usual place of election, and if the majority of votes cast shall be in favor of the appropriation, then the same shall be made; otherwise not.

SEC. 2. The authorities of said townships, towns, or cities respectively are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law.

The act of February 26, 1869 (Rec., 17), was "An act to "legalize certain aids heretofore voted and granted to aid in "the construction of the Chicago, Danville and Vincennes "Railroad," and its provisions only refer to aid *theretofore* voted. The only vote of Concord township upon the question of granting aid to this railroad company was held long after the passage of this act, viz.: November 29, 1869.

The only material parts of the act of March 24, 1869 (Rec., 18), are as follows:

SEC. 3. The legal voters of any town, township or city along the line of said railroad which shall run into or through said town, township or city, or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriations or donations to aid in the construction of said railroad, and the proper authorities shall levy and collect taxes in the manner that other taxes are levied and collected to promptly meet any obligations assumed under and by virtue of this act. * * *

SEC. 4. The authorities of any township, town or city—such township, town or city having voted to contribute aid in the construction of said railroad—may borrow money to promptly meet such contribution, and issue bonds of such township, town or city, at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places and payable at such time or times as they may deem for their best interest, and shall have power to levy and collect such taxes as may be necessary to pay accruing interest or pay the principal sum.

SEC. 5. In all cases when any township, town or city shall have voted to contribute any aid, as hereinbefore provided, toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town or city.

The act of April 16, 1869 (Rec., 20), is entitled "An act "to fund and provide for paying the railroad debts of counties, "townships, cities and towns." If it has any connection with the points involved in this case, we have failed to notice it.

The Chicago, Danville and Vincennes Railroad was never built through the town of Concord or Sheldon. The bonds were wrongfully issued by the Supervisor on the 9th day of October, 1871, and three of them came into the possession of the defendant in error, by purchase in the open market for value, and she brings this suit upon these three bonds, numbered 15, 16 and 17, and the coupons attached thereto. The cause was submitted to the court without a jury, and a judgment was rendered for the plaintiff, and the defendant brings the case here upon writ of error.

On the 26th day of September, 1872, Samuel Warrick and other tax-payers in Concord township filed their bill of complaint in the Circuit court of Iroquois county against the Chicago, Danville and Vincennes Railroad Company; George R. Dunning, supervisor; Edward D. Boone, town clerk; Peter V. Trowntelter, collector of taxes for said town of Concord, and John Henry Fairbinks, the owner of bonds numbers 15, 16 and 17 (being those in controversy), and other holders of bonds, praying for an injunction against the collection of said bonds, upon the ground that they were issued without authority of said town of Concord, and that they were void.

On the 2d of November, 1872, John Henry Fairbinks, the then owner of the three bonds in suit, filed his answer to said bill, averring that he was a *bona fide* holder of these three bonds, for value and without notice of any irregularity, and insisted that they were properly issued. Evidence was taken and the cause was submitted at the February term of said court, A. D. 1878, and a decree was rendered (Rec., 35, 36, 37, 38 and 39), reciting all the material facts in relation to their issue, and perpetually enjoining John Henry Fairbinks, the owner of these three bonds, and other owners, from "selling, "transferring or collecting, or attempting to collect, any or either "of the bonds or coupons" named in that decree or pleadings in that cause, for the reason that said bonds were void. From this decree no appeal was taken, and said decree has from that time to this, and now is, in full force and effect.

The record does not show at what date the defendant in error purchased the bonds in suit, but from the adjudicated facts it must have been after John Henry Fairbinks filed his answer to that complaint.

The fourth special finding (Rec., 40), is:

That the Chicago, Danville and Vincennes railroad does not touch either the township of Concord or Sheldon; that the nearest point of said railroad to said Concord township is four miles west of the north-west corner of the township of Middleport, and the nearest point to Sheldon township is about the same distance west; that said road is about eight and one-half miles away from the village of Iroquois, formerly called the village of Concord, and about three-quarters of a mile further from the village of Sheldon; that said railroad company never built any track or line through the townships mentioned; that said railroad company has never run any train through the townships of Concord or Sheldon; that there never was any vote taken in the township of Concord on the subject of issuing bonds, except as shown by the records set forth in the agreement of facts in evidence in this case; that there was no vote taken to issue bonds or pay the donation to the Chicago, Danville and Vincennes Railroad Company made by said township of Concord.

And the fifth special finding of fact is that the total assessed value of the real and personal property in said town of Concord for the year 1869, was $173,897, and for the year 1871, $156,014.

The bonds described in the declaration are bonds dated October 1, A. D. 1871. (Rec., 6.) The copy of bond attached to the declaration is under date October 1, 1871. (Rec., 10.) The bond stipulated on the statement of facts which extends from page 19 to page 37 of record, as the description of the bonds sued on is described as dated October 1, 1871. The three bonds offered in evidence were dated *June* 1, 1871 (Rec., 62 69), and were objected to on the ground that there was a variance between them and those described in the declaration. They were received in evidence over the objection, and the declaration was not changed, nor was any explanation given of the change of the date of the bonds. It seems from the decree in the case of *The Town of Concord* v. *Sylvia Robinson*, that two series of bonds were issued on the same matter, and that the bonds dated June 1, 1871, were isssued in the place of the first series. (Rec., 104.)

The present constitution of the State of Illinois went into force July 1, 1870. The constitution in force at the time the votes were taken in relation to aiding the Chicago, Danville and Vincennes railroad, was the constitution of 1848, and the provisions contained in section 5, article 9, of that constitution were the ones which relate to the questions involved in this case. They are as follows (Art. 9, § 5, Const. 1,848):

" The corporate authorities of counties, townships, school
" districts, cities, towns and villages may be vested with power
" to assess and collect taxes for *corporate purposes*, such taxes to

"be uniform in respect to persons and property within the "jurisdiction of the body composing the same. And the general assembly shall require that all the property within the "limits of municipal corporations belonging to individuals shall "be taxed for the payment of construction under authority "of law."

The provisions of the Constitution of 1870, which relate to the subject of municipal indebtedness, are contained in the following section:

ARTICLE IX.

SECTION 12. No county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five *per centum* on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation, incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district or other municipal corporation from issuing their bonds in compliance with any vote of the people which may have been prior to the adoption of this constitution in pursuance of any law providing therefor.

ASSIGNMENT OF ERRORS.

1. The court below erred in admitting in evidence, against the objections of plaintiff in error, the three papers, and each of them, purporting to be the bonds of said town of Concord, because there was and is a variance between the same and the bonds described in the declaration, and because there were erasures and interlineations on the face of said three papers offered in evidence, and each of them, which were unexplained, and because the same were executed and delivered without the authority of said town of Concord, and are void in law.

2. The court below erred in admitting in evidence, against the objections of plaintiff in error, the twenty-one papers, and each of them, purporting to be interest coupons of said town of Concord, for the same reasons stated in the foregoing assignment of error against the admission in evidence of said three papers purporting to be the bonds of said town of Concord.

3. The court below erred in finding as a matter of fact that the signatures to the three papers offered in evidence purporting to be the bonds, and to the twenty-one papers purporting to be the interest coupons of said town of Concord, were genuine, because there was no evidence whatever offered of the genuineness of said signatures, or any of them.

4. The court below erred in finding as a matter of law that defendant in error became the owner of said bonds without notice of any defense thereto, because in law she had constructive notice of a good defense thereto.

5. The court below erred in finding that the plaintiff in error is estopped from alleging that said railroad was not built.

6. The court below erred in entering the judgment aforesaid in manner aforesaid, because of the errors mentioned in the foregoing assignments of error, and, further, because it appears from the evidence that said town of Concord had no authority to issue the bonds aforesaid, or any of them, and that said bonds were of no legal force or effect whatever, and because there is a variance between the writ of summons and the declaration in said cause.

7. The said judgment is contrary to the law in the case.

8. The said judgment is contrary to the law and the evidence in the case.

POINTS.

I.

There was a fatal variance between the bonds described in the declaration and those put in evidence.

Cook v. *Graham*, 3 Cranch, 229.
U. S. v. *LeBaron*, 4 Wall., 642.

II.

THE BONDS WERE ISSUED IN VIOLATION OF THE CONDITIONS ON WHICH THE ELECTORS VOTED THE DONATION, IN PAYMENT OF WHICH THE BONDS IN QUESTION WERE PRETENDED TO BE ISSUED.

The *proviso*, in the proposition voted upon, was a condition precedent to the donation taking effect.

Northern Bank v. *Porter Township*, 110 U. S., 608.
Railroad Co. v. *Falconer*, 103 U. S., 821.
Town of Concord v. *Savings Bank*, 92 U. S., 625.

III.

There was no *estoppel*, because there was, under the well-established construction by the Supreme court of Illinois of the laws involved, no authority conferred upon the supervisor and town clerk of the town of Concord to issue the bonds.

Fairfield v. *Gallatin Co.*, 100 U. S., 47.
Township of Elmwood v. *Marcy*, 92 U. S., 289.

Section 5 of article 9, constitution of 1848, is a limitation on the power of the general assembly.

Gaddes v. *Richland Co.*, 92 Ill., 126.
Marshall v. *Silliman*, 61 Ill., 218.
Howard et al. v. *St. Clair Drainage Co.*, 51 Ill., 130.

The authority to contract an indebtedness must be conferred by the general assembly before the corporation can act, and under such authority the assent of the municipality must be given.

Williams v. *The Town of Roberts*, 88 Ill., 20.
Hissler v. *Drainage Commissioners*, 53 Ill., 110.
Livingston v. *Wesler*, *id.*, 302.
Marshall v. *Silliman*, *supra.*
Geddes v. *Richland*, *supra.*

Such assent can be given by *representative boards* or by the votes of the electors, but can not be given by a supervisor or town clerk, according to the laws of Illinois.

Williams v. *The Town of Roberts*, 88 Ill., 20.
Town of Keithsburg v. *Frick*, 34 Ill., 405
Town of Middleport v. *Ætna Lf. Ins. Co.*, 82 Ill, 562.
Shaeffer v. *Bonham*, 95 Ill., 368.
Williams v. *Town of Roberts*, *supra.*
Barnes v. *Town of Lacon*, 84 Ill., 461.
Lipincott v. *Town of Pana*, 92 Ill., 24.

The act of March 7, 1867, has been construed as authorizing a vote to appropriate money to be paid by taxation, but not to pledge the credit or issue bonds.

Town of Middleton v. *Ætna Ins. Co.* (*supra*).

The act of February 26, 1869, was in terms confined to appropriations theretofore made, and has been held unconstitutional.

Town of Middleton v. *Ætna Ins. Co.* (*supra*).

The act of March 24, 1869, confers authority upon counties *to pledge their credit* (§ 1), but upon townships it confers only authority to *make appropriations or donations to aid, etc.* (§ 2). Authority may be construed as being conferred upon townships, upon a vote of the *electors to that special effect*, where they have theretofore voted to contribute aid, to issue bonds in payment of such contribution. This statute (§ 4), has been construed as conferring no authority upon the *supervisor* and *town clerk*.

Middleport v. *Ætna Life Ins. Co.* (*supra*).

The construction of these statutes has been adopted by this court.

Township of Elmwood v. *Morey*, 92 U. S., 289.

The act of April 16, 1869, has no relation to *conferring authority*. It only provides for registration on behalf of the owner. It expressly provides that if conditions are not complied with bonds issued shall be void. No authority is given to the supervisor to certify as to whether an election had taken place.

IV.

The *fact* of the issue by the supervisor and town clerk of the bonds would not tend to show their authority.

The recitals in the bonds would not have any effect to prove the facts, nor would any one have a right, in any view, to rely on them, excepting so far as those making them were authorized by law to represent the town.

The town clerk was only authorized to enter in his book the description of the bonds and on what donation issued. The entries beyond this were nugatory.

The supervisor was, by the law of April 16, 1869, only authorized to certify that the railroad was completed and that the subscription or donation was submitted to the vote of the people and approved by them. The voters, however, did not give him any authority to bind them, and he cannot, therefore estop them. The legislature could give them no such power without the consent of the municipality. *This statute did not authorize him in any event to certify whether the question of issuing bonds had been submitted to vote*, hence his certificate to that effect is without law.

Besides, it on its face states that the bonds were issued under the act of March 7, 1867, which on its face shows that the town had no authority to issue bonds under that act, nor to vote aid, unless the road was constructed through the town. The general assembly had no power to give the supervisor authority to represent the town. This could only be done by the electors. They did not give it. Hence his certificate was a void act.

V.

THE PROVISIONS OF THE TWELFTH SECTION OF THE NINTH ARTICLE OF THE CONSTITUTION OF 1870 RENDER THE BONDS VOID.

The electors had rescinded their vote before anything had been done on the faith of it. There was, therefore, nothing in the way of a rescission. This being done, nothing existed for the saving clause of the constitution of 1870 to take effect upon. The electors had not, prior to that constitution, voted on the proposition to issue bonds, and the case is not within the terms of the saving clause.

Dillon, Muncp. Corporations, § 228.
Aspinwall v. *Comnr. Jo Daviess Co.*, 22 How., 364.
Wadsworth v. *Supervisors*, 102 U. S., 534.
Stodard v. *Gilman*, 22 Vt., 568.
Pond v. *Negus*, 3 Mass., 230.
Stone v. *Supervisors*, 47 Ill., 256.
Beckwith v. *English*, 51 Ill., 147.

The constitution of 1870 was notice to the world that bonds of municipalities dated after July 2, 1875, were void unless the specific question of issuing bonds had been authorized by a vote of the electors before that date. Thus the general law declared all bonds issued after July 2, 1870, *invalid*. Every purchaser was therefore put on his diligence to see whether bonds dated after July 2, 1870, which he might propose to purchase, came within the saving clause.

Wright v. *Bishop*, 88 Ill., 302.

VI.

The absence of power to issue these bonds, and the lack of all authority in the supervisor and town clerk, is in substance that *total lack of authority* that cannot be overcome by an estoppel. The following cases in this court, carefully considered, illustrate the doctrine of estoppel as applied in this court to be inapplicable to case at bar:

Converse v. *City of Fort Scott*, 92 U. S., 503.
County of Moultrie v. *Rockingham*, *idem*, 631.
County of Leavenworth v. *Barnes*, 94 U. S., 70.

County of Davis v. *Huidekoper*, 98 U. S., 98.
Commissioners v. *Thayer*, 94 U. S., 631.
Block v. *Commissioners*, 99 U. S., 686.
Kirkbridge v. *Lafayette*, 108 U. S., 208.
Northern Bank v. *Porter Township*, 110 U. S., 608.
Dixon Co. v. *Field*, 111 U. S., 83.

VII.

The cases arising on bonds issued under the laws of Illinois by municipalities in that state do not sustain or tend to sustain the validity of these bonds.

Elmwood v. *Morey*, 92 Ill., 289.
County Moulton v. *Savings Bank*, *idem*, 631.
Fairfield v. *Gallatin Co.*, 100 U. S., 47.
Roberts v. *Bolles*, 101 U. S., 119.
Hurter v. *Kernocham*, 103 U. S., 562.
Benham v. *Needles*, *idem*, 648.
Louisville v. *Savings Bank*, 104 U. S., 469.
Wade v. *Walnut*, 105 U. S., 1.
Moultrie v. *Fairfield*, *idem*, 370.
Pana v. *Bowler*, 107 U. S., 529.
Anderson v. Santa Anna 116 U.S. 356

ARGUMENT.

I.

THE VARIANCE BETWEEN THE BONDS DESCRIBED IN THE DECLARATION AND THOSE OFFERED IN EVIDENCE WAS FATAL.

The following allegations in the declaration are descriptive of the instruments sued on: "Said bond reciting upon its face "that it was issued under and by virtue of the law of the "State of Illinois to authorize cities, towns and townships "lying within certain limits to appropriate moneys and levy a "tax to aid the construction of the Chicago, Danville and Vincennes Railroad, and that the faith of said township of Concord is thereby pledged for the payment of said principal "sum and interest as aforesaid, *and bearing the signatures of "G. R. Dunning, supervisor, and E. D. Boone, clerk of said "township, as of the first day of October, A. D. 1871, and each of "said bonds being of the same form, etc.*" (Rec., 6, 7.)

The copy attached to the declaration is of a bond dated "*the first day of October one thousand eight hundred and seventy-"one.*" (Rec., 10.)

The bonds put in evidence were dated *June 1, 1871.* (Rec., 63-70.)

To the admission of these bonds the defendants below objected on the ground of variance, which objection was overruled and the bonds admitted, and exception was duly taken.

We submit that the words quoted from the declaration were used to describe the instruments sued on—that the copy annexed to the declaration shows that such was the intention of the pleader.

The record shows something about another series of bonds (page 104),and the stipulation of facts is that the bonds intended bear date October 1, 1871. (Rec., 20, 21.)

We submit that the variance under the circumstances was fatal.

Cook v. *Graham*, 3 Cranch, 229.
U. S. v. *Le Baron*, 4 Wall, 642.

II.

That the bonds in question were issued and delivered in violation of the conditions on which aid was *voted* to be extended to the Chicago, Danville and Vincennes railroad, and without any vote for the issuing of bonds, will not be questioned.

The testimony in the trial on these subjects was not controverted.

W. B. Simonds,a witness for the defendant below, testified *that the railroad does not touch either the township of Concord or Sheldon and that the nearest point of said railroad to said Concord township is four miles west of the north-west corner in the township of Middleport, and the nearest point to Sheldon township; that said road is about eight and one-half miles away from the village of Iroquois, formerly called the village of Concord, and about three-fourths of a mile further from the village of Sheldon; that said railroad company never built any track or line through the townships mentioned; that said railroad company has never run any train through the townships of Concord or Sheldon so far as witness has any personal knowledge, and witness has resided in the immediate vicinity of Concord since* *the year 1864; and that there was never any vote taken in the township of Concord on the subject of issuing bonds except as shown by the records set forth in the agreement of facts in evidence in the case.* (Rec., 94.)

The agreement of facts shows a call for a special town meeting "for the purpose of voting a tax to be levied on the taxable "property of said town to the aggregate amount of $25,000," to be assessed and collected in two annual installments to be donated to the company making the Vincennes, Danville and Chicago railroad, "*provided* said company build or make said "road through the village of Concord in said town of Concord, "and the town of Sheldon in Sheldon township."

This is the only vote taken excepting a vote on the 30th of June, 1870, rescinding said action.

The validity of these bonds will probably not be contended for, therefore on any other ground than that the entry in the town records by the clerk and the certificate of the supervisor to the effect that the conditions had been complied with, estop the appellants.

This *proviso*, we contend, operated as a condition precedent. No donation took place until that proviso was complied with. The electors never voted on the proposition to leave it to any officer to determine when that proviso was complied with, much less to authorize any one to waive it.

A proviso is defined by Bouvier (Law Dic.) as always *implying a condition* unless subsequent words change it into a covenant, as implying that a certain thing shall or shall not take place, in order that an agreement contained in the clause shall take effect.

So far as it is possible for a municipal corporation to establish a condition precedent, going to the very foundation of authority or right granted, it has been done in this case.

Town of Concord v. *Savings Bank*, 92 U. S., 625.

Northern Bank v. *Porter Township*, 110 U. S., 608.

Railroad Co. v. *Falconer*, 103 U. S., 821.

We understand the case of *Northern Bank* v. *Porter Township*, *supra*, to hold that the statute involved having provided that in case the electors of Delaware county, Ohio, upon the proposition to subscribe to the capital stock of the Springfield and Mansfield Railroad Company being submitted, did not authorize such subscription; then a proposition to subscribe might be submitted to the voters of the several townships, the requirement that the question should be first submitted to the electors of the county and rejected by them *was a condition precedent*.

In the case of *Railroad Co.* v. *Falconer*, the county judge appointed commissioners under a New York statute, who were empowered and directed to subscribe for stock in a railroad company, *where the road should be constructed through a certain village*. This court held the construction of the road through the village a *condition precedent* to *the vesting of any authority whatever*.

In the case at bar the statute of March 7, 1867 has been held to give no authority to donate aid to any road not passing through the township, as has been seen. Under this act the vote was taken, and the condition applied in express terms. The act of March 24, 1869, was never acted under by the voters. If it is construed as giving the electors a right to aid a road running near to a township, *the electors never availed themselves of the privilege—never acted under it at all*.

The case at bar is a very strong one. There is no hardship on the purchaser of these bonds. Under the constitution of

1870, the purchaser was bound to look into the *proceedings* to see whether the bonds were within the saving clause. The purchaser, independent of that, was bound to look into the law *recited in the bond.* That law was notice to him that the construction of the road through Concord was a *condition precedent* to power to giving aid to this road. It was a notorious fact of easy ascertainment, that the road was not built through the town.

Looking into the act of April 16, 1869, providing for the registration of bonds, the purchaser would have found that law expressly providing that unless the *conditions prescribed were complied with the bonds should be held to be illegal and void.*

The case at bar is a bald case of fraudulent conspiracy between the agents of the railway company and the supervisor and town clerk. We have not seen a case in the books of a more palpable and unmitigated fraud upon a municipal corporation. If there ever was a case where a "condition precedent" has vindicated its "*raison d'etre,*" it is this case, and to our mind there is not the least difficulty in classifying the case at bar with the cases found in the books, where conditions have been held precedent to the power to act.

III.

There was no estoppel because the vote on November 20th did not authorize the township authorities to issue bonds. There was an entire absence of power to issue them. The court below based its decision upon the statute of March 7, 1869, holding that that statute conferred sufficient authority irrespective of the curative acts of 1869. (Rec., 114.) In this respect we submit that the court below did not follow the construction by the Supreme court of Illinois of the constitutional provisions and statutes involved. This court follows the construction put by the state courts upon their constitutions and laws where that construction is well established.

Fairfield v. *Galatin Co.*, 100 U. S., 47.
Township of Elmwood v. *Marcy*, 92 U. S., 289.

The fifth section of the ninth article of the constitution of Illinois as it stood in 1848 has been under construction before the Supreme court of Illinois several times, and has always been held to be a limitation upon the power of the general assembly to impose a tax on property in municipal bodies, and to prohibit that branch of the government from creating municipal indebtedness to be paid by taxation imposed on the property in such municipalities.

Gaddis v. *Richland County*, 92 Ill., 126.
Marshall v. *Silliman*, 61 Ill., 218.

It has always been understood to be a limitation both ways, *i. e.*, the general assembly has no power to provide for taxation or for an indebtedness for any local or corporate purpose, and the municipality cannot provide for taxation except for local or corporate purposes.

Harward et al. v. *St. Claire Drain Co.*, 51 Ill., 130.

It is well settled that the general assembly can *only confer the authority to contract municipal indebtedness and when conferred* such indebtedness can only be incurred by the assent of the municipality. The following cases are to this effect, and show clearly the doctrine of the Supreme conrt of Illinois on this subject:

Williams v. *The Town of Roberts*, 88 Ill., 20.
Hessler v. *Drainage Comnrs.*, 53 Ill., 110.
Livingston v. *Widen*, *id.*, 302.
Marshall v. *Silliman*,
Geddis v. *Richland*, *supra*.

How this assent of the municipality can be conferred involves the construction of the laws creating such municipalities, whether general or special. By these laws boards of supervisors, of county commissioners, of trustees, have been created and their official duties regulated. By these laws, also, certain ministerial offices have been created, such as town supervisors, town clerks, and the duties and powers of the incumbent determined. These laws have also been construed by the Supreme court of Illinois.

That court holds that boards of supervisors, boards of trustees, and common councils are *representative boards*, and that the authority to impose taxes or create an indebtedness upon a municipality represented by any such board may be conferred on that board.

Williams v. *The Town of Roberts*, 88 Ill., 20.
Town of Keithsburg v. *Frick*, 34 Ill., 420.

They also hold that the *supervisor and town clerk* are not of representative authority, but are merely ministerial, and therefore are powerless to give the assent of a township to any liability by the general assembly authorized to be incurred, and that the only mode *by which* the assent of a township to a proposition to incur a liability authorized by the general assembly is by a vote of the electors.

Town of Middleport v. *Ætna Life Insurance Company*, 82 Ill., 562.
Schaeffer v. *Bonham*, 95 Ill., 368.
Williams v. *Town of Roberts*, 88 Ill., 20.
Barnes v. *Town of Lacon*, 84 Ill., 461.
Lipincott v. *Town of Pana*, 92 Ill., 24.

The Supreme court of Illinois have also construed the act of March 24, 1869. That act authorizes certain towns and cities, and towns under township organization to appropriate such sums of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company "to aid in the construction of the road of said company, *to be paid to said* "*company* as soon as the track of said road shall have been "located *and constructed through said city*, town, or township respectively," upon a vote by the electors, approving of such appropriation (Sec. 1) and authorizes the "authorities of said townships, etc." *to levy and collect a tax and make such provisions as may be necessary and proper* for the prompt payment of the appropriation under the provisions of this law.

The Supreme court of Illinois say this means that the electors may by vote declare whether the township will appropriate and *raise by taxation* a sum of money to aid the said railroad, and whether they will pledge the township credit by the issuing of bonds, but they hold that there is no authority conferred to *issue bonds without a vote on that question specifically*, and that under that act no authority or power is conferred upon the supervisor and town clerk to issue bonds, without a vote of the electors specifically authorizing them to do so.

Town of Middleton v. *Ætna Life Ins. Co.*, 82 Ill., 562.

In short, then the Supreme court of Illinois holds that under the constitution of Illinois, as it was in 1848: (1.) The general assembly has no power to confer power upon a municipality to impose taxes or incur liability, excepting for local and corporate purposes. (2.) The general assembly cannot impose taxation or any liability upon any municipality without the consent of such municipalty. (3) That the local laws of the state have created certain boards with representative authority, who may give that assent. (4) That those laws have also provided for certain officers in township organization, to wit: a supervisor and town clerk, and imposed on them ministerial duties, but have not conferred on them the power to *give the assent of their township to either taxation or to the issuing of bonds*, that they are only authorized upon a vote of the electors for that *specific purpose*, to issue bonds. (5) That the act of March 7, 1867, did not confer authority to issue bonds upon the supervisor or town clerk, and did not confer authority to borrow money; that the words "authorities of said townships," where they occur in section 2 of said act, *mean the electors and not the supervisor and town clerk* when applied to township organizations. If, then, the constitution and laws of Illinois, as construed by the Supreme court of that state, are to be followed by this court, there can be no question but that the supervisor and town clerk of the town of Concord were acting not simply with irregularity, but with absolute want of power in issuing the bonds in controversy, in the absence of any vote of the electors authorizing such bonds. The court below was therefore in error in holding that the statute of March 7, 1867, authorized the issue of these bonds.

The Enabling Acts.

The question, however, arises whether any of the enabling acts changes this aspect of the question.

The act of February 26, 1869, was passed before the vote was taken for the alleged appropriation on the basis of which the bonds in controversy, it is claimed may be sustained as valid in terms is confined to "*taxes, aids and appropriations heretofore* " *(theretofore) voted by towns, townships or cities along the pro-* " *posed route of the Chicago, Danville and Vincennes rail-* " *road.*"

But the act is not only inapplicable, but held to be unconstitutional in *Middleport* v. *Ætna Life Ins. Co.*, *supra*.

The other acts referred to are the one of March, 24, 1869, and the one approved April 16, 1869.

The act of March 24, 1869, provides, (1st.) That counties may contribute aid *or loan their credit* through their boards, or by action of the County court, upon a vote by the electors approving such appropriation, *or loan of credit*. (2.) That "the "legal voters of any town or township, or city along the line "of said railroad, whether said railroad shall run into or through "said town, township or city or not, may, by a majority of the "legal voters voting at any election held for the purpose, make "appropriations or donations to and in the construction of said "railroad, and the proper authorities shall levy and collect taxes "in the manner that other taxes are levied and collected to "promptly meet any obligations assumed under and by virtue of "this act."

It will be seen that while upon counties authority is conferred to pledge their credit (section 1), on towns, townships and cities, only authority "to make appropriations or donations to "aid, etc.," is directly conferred. (Section 2.)

Section 4, however, provides that "the *authorities* of any "township, town or city, such township, town or city having "voted to contribute aid in the construction of said railroad, "may borrow money to promptly meet such contribution, and "issue bonds of such township, town or city at a rate of interest not exceeding ten per cent. per annum, payable annually "or semi-annually, as they may deem best, and may negotiate "the same on such terms as they may deem advisable, and "may make the same payable at such place or places, and payable at such time or times as they may deem for their best "interests, and shall have power to levy and collect such taxes "as may be necessary to pay accruing interest and to pay the "principal sum." It is contended that this section of the act conferred authority upon the supervisor and town clerk to issue these bonds.

Our answer to this is (1) that the constitutional provision being a limitation upon the general assembly, whereby all authority is taken from them to create, either directly or indirectly, a liability upon a municipality for any local or corporate purpose; they had no authority to authorize mere ministerial agencies like a supervisor or town clerk to create a liability; (2) the section must therefore be construed with reference to the constitutional limitation and in harmony with it. So construed, it necessarily means no more than that "the "authorities of any township" may carry out the details of that section only when they are representative officers, as already noticed, or when the electors have voted a credit.

But we are not left to our own construction of this statute. The Supreme court of Illinois say, in reference to this fourth section (*Middleport* v. *Ætna Life Ins. Co.*, 82 Ill., 566):

"The power conferred by the act of March 24, 1869, is to "enable the proper town authorities to levy and collect a certain per cent. by taxation with which to meet and liquidate "aids voted, or to borrow money and issue bonds therefor for "the purpose of paying such donations. What is meant by "the 'authorities of any township' is not entirely clear, but "we understand it is that body of officers in a township that "represent the township as to its financial and other matters, as "a common council represents a city, or as a board of trustees "represents an incorporated town. *The supervisor and town* "*clerk of a township* constitute no such board, and no warrant "can be found anywhere in this act or elsewhere that would "justify them in borrowing money for any purpose and issu-

"ing bonds therefor. *That, we understand, can only be done* "*by a vote of the people* of the township whose property would "be affected by the burden imposed." * * * "Our opinion "is, if these acts referred to were intended by the framers to "have any such effect, or to impose any such burdens without "the consent of the citizens whose property would be affected, "then they are in violation of the constitution. (*Marshall* v. "*Silliman*, 61 Ill., 218.)

"The electors of the township under the act of March 7, "1867, had voted a sum of money as an appropriation or donation to the railroad company, to be paid by taxation, and in no "other way. *They never* gave their consent to any other "mode of payment, and if the object of the later statute was "to compel the township to issue interest-bearing bonds in "liquidation of such aids, it was beyond legislative powers." The construction of the Supreme court of Illinois upon these statutes has been adopted by this court as fixed and unbroken, and of that character which this court accepts and applies as a part of the *statutes themselves*. This court has held that the "town clerk and supervisor" are not "township authorities" having representative powers, and that they had no authority to bind the town in any way.

Township of Elmwood v. *Morey*, 92 U. S., 289.

Recurring now to the proceedings by which the vote of November 20, 1869, was taken, we find the call was for a special town meeting "for *the purpose of voting a tax to be levied* "*for 25,000 dollars, to be assessed and collected in two annual installments* to be donated to the railroad company;" we also find from the minutes of the meeting that the vote was "for "or against levying a tax on the taxable property of said town "of Concord, amounting in the aggregate, in two years, to the "sum of $25,000, to be donated," etc.

Hence, although the action was subsequent to the legislation of March 24, 1869, they did not, by implication, authorize the issuing of bonds, but under the maxim of [redacted] construction, *expressio unius exclusio alterius*, they voted *against the issuing of the bonds*.

This act, therefore, as construed by the Supreme court of Illinois, can afford no authority whatever for issuing the bonds in question.

The other act referred to, that of April 16, 1869, simply relates to creating a fund for the payment of bonds—*and to proceedings for registering those bonds*. It will not be contended, and never has been claimed, so far as we know, that any *authority* to create a liability or issue bonds, is conferred upon any one by this act. The significance of this act is confined to the question of estoppel. It is claimed that the certificate of the supervisor furnished to the *owner* to enable him to register the bonds under that law, estops the appellant.

This act will be examined under that branch of our argument. Before passing from this reference to this law, however, we call attention to the following provisions in the seventh section: "And any county, township, city or town shall have "the right, upon making any subscription or donation to any "railroad company to *prescribe the condition* upon which such "bonds, subscriptions or donations shall be made, and such "bonds, subscriptions or donations *shall not be valid* and binding until such *conditions precedent have been complied with*."

If this is to be construed as going to the power, there would be an end of the case. If authority is claimed under this act then the condition precedent referred to under our third head is recognized by law, and the failure of the condition is declared by the statute to make the bonds void.

We find then that without a vote authorizing the issuing of these bonds, there was absolutely no law authorizing their issue; also that it is not a question of mere irregularity, but one of absolute want of power. The supervisor and town clerk could only act, *under warrant of attorney from the electors.* To express our meaning by illustration; if the vote had been to issue bonds to be executed and delivered by the supervisor and clerk on the construction of the road through the town of Concord, then the warrant of attorney would impliedly leave it to the supervisor and town clerk to decide when all conditions had been properly fulfilled, etc. That is to say, the power to execute and deliver would in that case go to the supervisor and clerk, but they would be charged with certain duties and responsibilities as to when and under what circumstances they might exercise that power.

But in the entire absence of any vote, and in the entire absence of any representative authority, there would be no warrant of attorney at all.

If we adopt the constructions of the Supreme court of Illinois, therefore, there is an entire absence of all power, and there is no room for the application of the doctrine of estoppel.

IV.

THE ACTION OF THE TOWN CLERK AND SUPERVISOR COULD WORK NO ESTOPPEL ON THE APPELLANT.

(1.) Clearly the simple act of issuing the bonds would not estop appellant.

They must have some authority to issue these bonds, and the simple representation that they had such authority would not tend to prove it. Before the doctrine can apply at all, t must appear that they had authority to issue these bonds under *some conditions.*

Simply as supervisor and town clerk they had no authority over the matter, and no right to make any representations whatever on the subject.

It is necessary, therefore, to start with the proposition that the electors had under some condition authorized them to issue bonds.

(2.) The recital in the record of the town clerk was only authorized by law to the extent indicated in section 2 of the statute of April 16, 1869, which reads on this subject as follows: "And the county clerk *or other proper officer* shall make registration thereof in a book, to be kept for that purpose, in his office, *showing the date, amount, number, maturity and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given.*"

If the town clerk was authorized by law to make any entries in his book, it was because he was included in the words, "or other proper officer," and the entries he was authorized to make were just those enumerated.

He had no more legal right than any other person to enter in his book the words which it is supposed work an estoppel upon appellants, to wit: that the bonds were executed and delivered "*in consideration of said company having run their road through the villages of Concord and Sheldon, and in accordance with the vote of Concord township cast on the 20th of November, A. D. 1869, donatting 25,000 dollars in aid of said company, on conditions above stated.*"

There is not a syllable anywhere in any law authorizing or directing the town clerk to make any entry to this effect, or authorizing him to certify to any fact, except what his entries lawfully made showed. He was within his authority when he entered the *minutes of the election*, but he had no authority to enter on another part of his record any mere construction of his own as to the meaning of those minutes.

Moreover, if a holder of these bonds looked at the record he would be very negligent if he did not look at the whole record on the subject, from which it would have appeared that the issuing of the bonds was entirely without authority.

(3.) The judgment of the court below was based upon the view that the certificate of the supervisor was an estoppel upon the town of Concord. (Rec., 116.)

We presume that this furnishes the main ground on which appellee hopes to sustain the judgment of the court below.

This certificate is verified and was made under the statute approved April 16, 1869. This act provides under what conditions the owner of bonds may obtain the benefit of participating in the funds derived by setting apart certain proceeds of taxation, so that they might be paid by the state treasurer to apply on bonds which had been duly registered. (Statute April 16, 1869; Secs. 1 and 5). To enable the owner to procure the registration of his bonds, he was authorized to call on the supervisor for a certificate under oath "that all the preliminary conditions of this act required to be done to authorize the registration of such bonds and to entitle them to the benefits of this act have been complied with." (Sec. 7, Act of April 16, 1869.)

The preliminary conditions of lawful registration were (1) that the railroad "in aid of the construction of which the debt "was incurred shall have been near to or in such county or "township, city or town, and the cars shall have run thereon." 2d. That "the subscription or donation creating such deb "was first submitted to an election of the legal voters of said "county, township, city or town under the provision of the "laws of this state, and a majority of the legal voters living in "said county, township, city or town were in favor of such "aid, subscription or donation."

The certificate given by the supervisor contained the following asseverations:

(1.) That the bonds (describing them) were entitled to registration under the act of April 16, 1869.

(2.) That the bonds were issued under the authority of the provisions of the act to authorize cities, towns and townships lying within certain limits to *appropriate moneys and levy a tax* to aid the construction of the Chicago, Danville and Vincennes railroad, approved Msrch 7, 1867, and by a vote of the people of said township at an election held on the 20th day of November, 1869.

(3.) That all preliminary conditions have been complied with.

All he had any legal authority to certify to was, that the railroad had been built through or near to Concord, and cars had been run thereon, and that *the subscription or donation had* been submitted to vote and carried. He did not certify to this at all, and whatever he certified to over and above this he had no more authority to certify to than has the learned counsel for appellee. But let it be construed as stating as facts the above enumerated conditions to registration, it is still no estoppel, because it on its *face states that the bonds were issued under the statute of March 7, 1869, which, according to construction, did not authorize the loaning of the credit of the town, and because it did not state that the question of issuing bonds or loaning credit was ever submitted to vote.*

A still graver objection to this certificate as an estoppel is, that, according to the construction given by the Supreme court of Illinois, the 5th section of article 9, of the constitution of Illinois, 1848, the general assembly had no power to create a liability upon the town of Concord either directly or through the supervisor and town clerk. The electors never assented to such liability, and never authorized the supervisor to make any representation whatever. They did not act on behalf of the town, but on behalf of the owner. Having no representative right or authority, and not even acting on behalf of the town, it is impossible to see on what grounds an estoppel can be based. The town of Concord had nothing whatever to do with the matter of registration. That proceeding had nothing to do with the delivery or negotiation of the bonds. The town authorities had no connection with it. In short, aside from the legal difficulties in the way of this being an estoppel, *the evidence* fails to connect the certificate with the appellant.

V.

The provisions of the 12th section of the 9th article of the constitution of 1870 render these bonds invalid on two grounds:

(1.) The electors had by vote rescinded their action before anything had been done on the faith of their proposition to donate. Their proposed donation had not ripened into a contract before the adoption of that constitution.

(2.) The electors had not, prior to the adoption of that constitution, voted to issue bonds. Therefore the provisions of this section were an absolute prohibition upon the town "authorities," *unless* it could *be shown that these* bonds had already been voted. This was notice to all the world that a vote must be *ascertained* to have taken place upon the specific subject of issuing bonds before they could be saved from the general inhibition.

Wright v. *Bishop*, 88 Ill., 302.

The particular provisions of this section which we claim prohibited the issuing of these bonds of the 2d of July, 1870, are as follows:

First. The absolute prohibition upon municipal corporations from becoming indebted for any purpose whatever to an amount "exceeding five per centum upon value of the taxable "property therein, to be *ascertained by the last assessment for* "*state and county taxes previous to the incurring of such indebt*-"*edness.*"

Second. That said section "shall not be construed to pre-"vent any county, city, township, school district or other mu-"nicipal corporation from issuing their bonds in *compliance* "*with any vote* of the people which may have been had prior "to the adoption of this constitution in pursuance of any law "providing therefor."

This court held, in case of the *Town of Concord* v. *Savings Bank*, 92 U. S., 625:

First. That under the statute of March 7, 1867, the town could not make an appropriation or donation in aid of the company until its road was located and constructed through the town.

Second. That a constitution of the state which came into operation July 2, 1870, annulled the power of any city, town or township to make donations or loan its credit to the railroad, and after that date rendered the act of 1867 ineffectual.

Third. That the *town* had no authority to make a contract, and the acceptance by the company was an undertaking by the company to do nothing which it was not bound to do before the authority of the town to make or engage to make a donation came into existence, and no valid contract arose from such offer and acceptance.

Subsequently in the case of *Fairfield* v. *Gallatin County*, 100 U. S., 47, this court, following the decision of the Supreme court of Illinois in the case of the *Chicago and Iowa Railroad Company* v. *Pinckney*, 74 Ill., 277, qualified the former decision of this court in *Concord* v. *Savings Bank*, *supra*, holding that the former donation might be completed by issuing of bonds subsequent to the adoption of the constitution of 1870.

In the case of *Fairfield* v. *County of Gallatin*, the county was authorized by the legislature of the state to donate to the railroad company as a bonus or inducement to the building of the railroad any sum not exceeding $100,000, and was authorized to order the clerk of the County court or the board of supervisors to issue county bonds to the amount donated, and to deliver them to the company, providing that no donation exceeding $50,000 should be made until after the question of such larger donation should have been submitted to the legal voters of the county at an election. The statute further provided that if a majority of the ballots cast at such an election should be in favor of the donation it should be the duty of the County court or *board of supervisors* to donate some amount not less than $50,000 nor more than $100,000 to the company, and to order the issue of county bonds for the amount so donated. On the 20th of February, in pursuance of these statutes, an election of voters of the county was held to determine whether the county would donate $100,000 of these bonds in aid of said road, and the election resulted in authorizing their issue. They were not, however, in fact issued until the 6th or 8th of October, 1870.

This, it will be seen, presents a very different case from the one at bar. Here was a vote by the electors on the proposiance by the company *were not according to the conditions contained in the proposition.* The proposition was to donate the sum mentioned to the railroad, "*provided said company build "or make said road through the village of Concord in said "town of Concord, and the town of Sheldon, in Sheldon town-"ship.*" (Rec., 27.)

In the alleged acceptance the railroad company say that "*they will "construct their railroad through or into said town of Concord "in pursuance to the terms and conditions voted by said town.*" (Rec., 30.)

The railroad does not say that it will construct this road also through the town of Sheldon, in Sheldon township, which was also one of the conditions on which said donation was promised. There is no pretense that there was ever any waiver on the part of the town of Concord of any of the conditions annexed to said donation. There was, therefore, no acceptance when the vote of the people was taken on the 30th day of June, 1870. (Rec., 35.) By that vote they rescinded that proposition, and so at the time of the adoption of the constitution of 1870 there was absolutely nothing existing to bring the case of the town of Concord within the saving clause of that constitution. As to the binding force of propositions to subscribe as holding that the same must be completed by some definite contractual act we cite the following:

Aspinwall v. Commissioners of the County of Daviess, 22d How., 364; *Wadsworth v. Supervisors*, 102 U. S. Rep., 534, and *State v. Garrett*, 67 Mo., 445.

On the question of the right to rescind we cite Dillon Municip. Corp., § 228; *Aspinwall* v. *Coms. Jo Daviess Co.*, 22 How., 364; *Wadsworth* v. *Super.*, 102 U. S., 534; *Stodard* v. *Gilman*, 22 Vt., 568; *Pond* v. Negus 3 Mass., 230; *Stone* v. *Supervisors*, 47 Ill., 256; *Beckwith* v. *English*, 51 Ill., 147.

The function performed by electors in voting upon the question of taxation and assuming liabilities is in a certain sense legislative in its character. The vote by the electors of the town of Concord on the 30th day of June, 1870, was analogous to the repeal of their act of the 20th of November, and the question whether there was a binding contract was somewhat analogous to the question in *Wadsworth* v. *Supervisors* (*supra*). That case approved the case of *Aspinwall* v. *Commissioners*, and applied the same, and it seems to us the two cases cited settle the question in this court as to the fact of the action of the electors on the 30th day of June, 1870, being a complete recision of their former vote. It seems very clear to us that according to the doctrines of those cases there was no obstacle in the way of the vote of the 30th day of June, 1870, having whatever effect it could have, and it would seem to us to be unreasonable to contend that the electors having power to say whether they would donate to the railroad are nevertheless powerless to rescind their action.

VI.

The want of authority on the part of the supervisor and town clerk of the town of Concord to issue the bonds in question is in substance that absence of power which renders the bonds in controversy void in all hands. The doctrine of this court on the subject of estoppel in such cases is fairly illustrated in the following cases:

Converse v. *City of Fort Scott*, 92 U. S., 503; *County of Moultrie* v. *Rockingham*, the same, 631; *County of Leavenworth* v. *Barnes* 94 U. S., 70; *Commissioners* v. *Thayer*, *idem*, 631; *County of Daviess* v. *Huidekoper*, 98 U. S., 98; *Block* v. *Commissioners*, 99 U. S., 686; *Kirkbridge* v. *Lafayette*, 108 U.

S., 208; *Northern Bank* v. *Porter Township*, 110 U. S., 608; *Dixon Co.* v. *Field*, 111 U. S., 83.

In the case of *Converse* v. *City of Fort Scott*, the mayor and city council were authorized to make donations of land for ~~the~~ right of way and other purposes to the railroad company, and were authorized to issue bonds for any indebtedness existing or to be contracted thereby. Instead of procuring the right of way, etc., they issued bonds in satisfaction of the obligations resting over the city in relation thereto. The bonds issued were registered in the office of the state auditor and the bonds contained a recital of the regularity and legality of their issue. This was a case where officers were authorized to exercise their *judgment or discretion* as to the issue of the bonds.

Moultrie v. *Rockingham* was a case arising under the laws of the State of Illinois. The county of Moultrie was authorized to subscribe through its board of supervisors to the capital stock of the railroad company, and to issue bonds therefor, the bonds to *be issued as the board of supervisors might determine.* A subscription was made by the board of supervisors and bonds were issued which were executed by the president of the board and the county clerk. The recital in these bonds was that they were issued in pursuance of the subscription by the board of supervisors of the county of Moultrie, in conformity with the provisions of the act of the general assembly of the State of Illinois, approved March 6, 1869. The county was held to be estopped because it was found that there was authority in said act to make such subscription and to issue said bonds, and no constitutional provision was in the way. In this case there was a *representative board having authority* within the decisions of the Supreme court of Illinois, to confer the consent of a municipality to any proposition of taxation and to assume a liability, and also authority to issue bonds. Under such circumstances it was considered that the doctrine of estoppel would apply. This case was distinguished in case of the *R. R. Co.* v. *Falconer*, 103 U. S., 821, in which the county judge on petition of the taxpayers of a town in the State of New York appointed commissioners who were empowered and directed to subscribe for stock in the railroad company, when their road should be constructed through a certain village. It was held *that the construction of the road was a condition precedent to the exercise of the commissioners' power* to make subscriptions, and that a contract between the company and the commissioners whereby the latter assumed to bind the town to subscribe for stock was *ultra vires*, and the amendment of the constitution of the state which took effect subsequently, did not impair the rights of the railroad in the prohibition of municipal aid to corporations by subscriptions.

In distinguishing the *County of Moultrie* v. *Savings Bank*, (*supra*),

It is said that that case is based upon the fact that the board of supervisors had complete authority "*to make a present subscription, and that this included the power to agree to subscribe, etc.*," thus showing that the estoppel was based *upon the authority of the board to act, and to represent their county in their transactions.*

Daviess v. *Huidekoper*, 98 U. S., 98, was a case where the defense was rested upon the fact that the railroad company, for whose aid the bonds were issued *was not incorporated* when the *electors voted to* subscribe for stock in the company and issue bonds therefor. The doctrine of estoppel was applied on the ground that the officers who executed them were acting as the *authorized agents of the municipality, and if they exceeded their authority as to "form, manner, detail or circumstance, if they executed it in an irregular manner*, it was the misfortune of the town or county, and not of the purchaser. The case was considered one of *mere irregularity* in the exercise of a power, *the authority to act having been conferred in a proper manner.*

In *Block* v. *Commissioners*, 99 U. S., 686, it was held that Block, a *bona fide* holder of a part of the bonds in controversy "was under no obligation to look further therein to see that "there was legislative authority for the issue of the bonds, "*and that the condition upon which it was allowed to be exercised had been fulfilled.*"

The case of *Kirkside* v. *Lafayette Co.*, 108 U. S., 208, arose under a statute of Missouri, authorizing townships, through a certain formality upon a vote of the electors, to subscribe to the capital stock of a railroad proposing to build its road, "into, *through or near such township.*" The road was built about nine miles from the township. It was contended that this was not "near" the township within the meaning of the law. When the vote was taken the railroad company to whose stock the subscription was to be made, *had determined their location, and the proposition to the voters was to build the road within nine miles of the township.* It was held that the township could not be heard to allege that nine miles was not "near" the township. The estoppel was based upon *the action of the voters themselves.* The court simply acquiesced in *the determination by the qualified voters* and the local authorities that the proposed road "*was near the township,*" and hence *there was legislative authority to issue the bonds.*

In the case of *Northern Bank of Toledo* v. *Porter Township Trustees*, 110 U. S., it was held that where the authority to issue bonds existed, the proper authorities might bind a municipality by recitals in the bond." It was contended that since the township was authorized by a vote of electors to make a township subscription, provided the county on submission of the question of making a county subscription to the electors, did not procure authority to subscribe—that the unauthorization of

the county was a mere condition upon the *exercise* of authority by the township, and therefore the township was estopped by the recitals in the bond. *It was held that here was a condition precedent to the power vesting at all.* In this case the doctrine of this court, in relation to estoppels in cases of the character of the one at bar, is pretty fully described, and it is said:
“ *The adjudged cases, examined in the light of their special cir-*
“ *cumstances, show that the facts which a municipal corporation*
“ *issuing bonds in aid of the construction of a railroad was not*
“ *permitted against a bona fide holder to question in face of a*
“ *recital in the bonds of their existence were those connected with*
“ *or growing out of the discharge of ordinary duties of such of*
“ *its officers as were vested with authority to execute them, and*
“ *which the statute, conferring the power made it their duty to*
“ *ascertain and determine before the bonds were issued; not*
“ *merely for themselves as the ground of their own action in*
“ *issuing the bonds, but equally as authentic and final evidence of*
“ *their existence, for the information and action of all others*
“ *dealing with them in reference to it; and so it was held that*
“ *Porter Township was not estopped.*”

The case of *Dixon County* v. *Field*, 111 U. S., 83, fully justifies our position that the registrar's certificate and the certificate of the supervisor can work no estoppel.

We understand that case to hold that the recital of only such facts as the corporate officers *had a right to determine—to pass upon*—estops, and that a certificate of a state officer showing that a bond is issued pursuant to law, does not conclude a municipality from showing the facts.

It is difficult to see in the light of these authorities how the doctrine of estoppel can be applied in the case at bar. If it should be it will be carrying the doctrine much farther than it has ever been carried in this court and would have to be applied in some view of the statutes and constitutional provisions involved differing from the uniform holding of the Supreme court of Illinois.

VII.

A reference to cases decided in this court which have arisen upon municipal bonds issued in aid of railroads under the laws of Illinois will show that these bonds have not the support of any holding by this court, under the laws of Illinois. Indeed, it will appear that in no case has this court sustained the validity of bonds issued under such circumstances, as were the bonds in controversy.

We cite and briefly comment on the following cases, ~~which~~ which have been determined in this court on municipal bonds under the laws of the State of Illinois. The cases of *The Township of Elmwood* v. *Marcy; The Town of Concord* v. Savings Bank; *County of Moultrie* v. *Savings Bank*, and *Fairfield* v. *Gallatin County* (*supra*), have already been cited and commented upon. The case of *Roberts* v. *Bolles*, 101 U. S., 119, is a case which involved the *question of regularity in the election*, and it was held that the town of Roberts was estopped by the recitals in the bond.

The contention was that the irregularity in the call for the election rendered the election a nullity. There was a statute which declared that bonds *should not in any way become invalid* by means of mere irregularity *in giving notice or in the canvass and return of votes for the issuing of bonds.* It was held that this provision would be without effect if the municipality issuing the bonds could avoid them, because of mistakes committed by the authorities, such as are specified in the statute.

In the case of *Harter* v. *Kernochan*, 103 U. S., 562, the bonds were issued under an act of the general assembly of the

State of Illinois, approved February 25, 1867, incorporating the Illinois South Eastern Railway Company, and an act of February 24, 1869, amendatory thereof. In pursuance of the action of the electors of the township of Harter, in the county of Clay, State of Illinois, the township made a proposition contemplating a donation of $20,000, payable in three installments, to be raised by a special tax, and providing that the company should accept *township bonds* in lieu of the special tax, if authority could be obtained by law to issue them. An election was held and the donation upon the terms set forth in the company's proposition was approved. In this case it appears that the electors passed directly upon the question of issuing bonds, and authority was thereafter conferred by the general assembly, as contemplated in the proposition to issue the bonds in question.

The court criticises *Schaeffer* v. *Bonham*, 95 Ill., 378, and holds that the act of February 24, 1869, does provide for ~~the~~ submitting the question of issuing of bonds to the determination of the electors. The court says: "It is shown that *the* " *bonds in suit were issued in pursuance of the vote of the elect-* " *ors at a special meeting called to determine the question* " *whether the donation previously voted should be paid in that* " *mode.*"

In *Bonham* v. *Needles, idem*, 648, *Harter* v. *Kernochan* was reaffirmed. The facts were similar in some respects. The suit was to restrain the authorities from assessing and collecting taxes to meet certain bonds issued by Big Mound Township, of Wayne county, Illinois. The township had for nearly ten years regularly levied and collected taxes for the purpose of paying interest on the bonds. The bonds were issued under the act of the general assembly of State of Illinois, approved February 24, 1869, which conferred upon the townships in Wayne and Clay counties, which had previously voted donations to the Illinois South Eastern Railway Company, *authority to issue bonds in payment of such taxes upon the vote of the electors of such township assenting to that mode of payment.* The township had voted a donation to the company, one-third to be levied and collected by special taxes on each of three successive years. In the proposition submitted to the electors, the company bound itself to take township bonds in lieu of the special tax, if the requisite authority could be obtained by further legislation. That authority was obtained and the bonds were accordingly issued.

There was a certificate by the deputy clerk of Big Mound Town that the election had been held on the 20th day of August; *that a majority of the voters had voted in favor of giving bonds to the company.* Also several witnesses testified that an election was held. The decision was based upon the fact that the statute conferred authority upon the township to issue bonds in payment of *the donation voted, and that the qualified electors had assented thereto at a regular, special meeting and that the bonds recited that they were issued in pursuance of the authority of the statutes.* It was held that the town was estopped as against the *bona fide* holder of these recitals.

The case of *Louisville* v. *Savings Bank*, 104 U. S., 469, was an action brought upon bonds issued by the township of Louisville, Clay county, Illinois, to the Illinois South-Eastern Railway Company under the same acts referred to above. The voters at an election on the 10th day of November, 1868, under the provisions of the act, approved of the proposition submitted by the railway company the same in substance as in the cases already mentioned. The voters also held an election on the 2d day of July, 1870, at nine o'clock A. M. for the purpose of deciding by vote whether a special tax should be levied for the payment of their *donation, or bonds should be issued, and resulted in favor of the issuing of bonds.* On the same day the people voted upon the question of the adoption of the constitution of 1870. It was contended that the authority to issue the bonds was not conferred, for the reason that the bonds were issued after the taking effect of the constitution of 1870. The vote itself was taken on the 2d day of July, 1870, while the constitution of 1870 was in force. The decision sustaining the validity of the bonds was based upon the presumption "*that* "*the township had in fact adopted the proposition to issue the* "*bonds before the adoption of the particular sections of the con*"*stitution separately submitted which relate to municipal sub*"*scriptions to railroads and private corporations.*" The case of *Shall* v. *Bowman*, 62 Ill., 321, was cited as showing that the vote on the constitution "was a *declaration of the people on the* "*2d day of July, 1870, that from and after that day* * * * "no county, city, town, etc., shall ever become subscriber to "the capital stock of the railroad, etc." In the case of *Wade* v. *Walnut*, 105 U. S., page 1, the one question involved was whether the constitution of 1870, *was in force on the 6th of August, 1870.* It was assumed that it went into effect on the 2d of July. It was not necessary to draw the point as finely as it was drawn in the preceding case, as to the particular day on which the constitution went into effect.

The case of *Moultrie* v. *Fairfield*, *idem*. 370 arose upon certain coupons detached from certain bonds issued by the county of Moultrie in satisfaction of its donation in aid of the Bloomington and Ohio Railroad Company *and another company*, under the authority of this act of the general assembly of Illinois, approved March 26, 1869, being the charter of the company. The 9th section of the act authorized certain towns, cities and counties, including Moultrie county, to subscribe to the stock of said company, and to make donations thereto, and *authorized the supervisors of Moultrie county to subscribe* to the capital stock of said company *and to issue bonds of the company* therefor to the extent of $80,000. An election was held November 2, 1869, at which the majority of the votes cast was in favor of the proposition to donate to the company the sum of $75,000 to *be paid in the bounds of the county* when the road should be completed, etc. In pursuance of this vote, the board, on December 19, 1869, passed an order that there should be donated by the county to the company the sum of $75,000, *and that when the road was completed there should be delivered to the company bonds to that amount.*

On November 1, 1871, the chairman of the board of supervisors, and the clerk of the county issued and delivered bonds to the company. The bonds recited that they were issued by the county by virtue of the vote of the majority of the voters. The case was complicated with the question whether the bonds were issued to the proper company, and with the question whether they had authority under the act to *donate* and *also to subscribe.* It was held that the bonds were issued according *to the intention of the people* to be fairly inferred from the record of the proceedings, and that the constitution of 1870 did not prohibit the issuing of the bonds, *their issue having been determined before the adoption of that constitution.* The defense to this was (1), that the county had no power under the law to issue them at all; and (2), that the board of supervisors of the county were not representatives empowered to bind it. The case was one simply of construction of the 16th and 17th sections of the charter of the Kankakee and Illinois Railroad Company, as in force April 15, 1869, and of the original act incorporating said company, approved November 6, 1869. It was contended that power to subscribe for stock and the power to issue bonds in payment therefor were distinct powers, and that the 17th section of the charter of the road was a reservation merely of power to subscribe stock, and that there being no reservation of power to issue bonds, that power ceased to exist on the passage of the act approved April 15, 1869.

The court construes the sections as *conferring the power to issue bonds* and holds the supervisors to have been the proper officers to issue them. There does not seem to be any question of estoppel directly involved, nothing having been done contrary to the expressed will of the electors.

The case of *Pana* v. *Bowler*, 107 U. S., 529, arose upon certain coupons, cut from certain bonds issued by the town of Pana, and dated June 23, 1873. They were issued under sections 9 and 10 of the charter of the Illinois South Eastern Railroad Company, and the act amendatory thereto, approved February 24, 1869. The court reaffirms the ruling in the case of *Harter* v. *Kernochan*, 103 U. S., 562, which is a similar case. The people of the township voted almost unanimously for the donation to pay which the bonds were issued. There was no fraud in their issue. The railroad complied on its part with all the conditions. The proposition upon which the people voted, and which was adopted by them, was whether the said township should donate to the Springfield, Illinois, South Eastern Railroad Company the sum of $10,000 in bonds to fall due in twenty years, etc. Afterwards, in the fall of the year 1873, the supervisor and town clerk of the township, *in pursuance of that election, issued the bonds in question. The power of the township of Pana to issue the bonds was beyond dispute, and unless the method of conducting the election by which the donation was voted was fatal to the authority of the officers of the township to issue the* bonds, they were legally issued. The recitals in the bonds were to the effect that the bonds were regularly issued according to law, etc.

We do not understand the case to go so far as to hold that in the *entire absence of an election in any form whatever the town* would be estopped. Nor do we understand the case to go so far as to carry the estoppel beyond questions of irregularity, and it would certainly be going beyond any other adjudicated case to hold that an officer without any representative authority at all, could, by recital that he was authorized to do a certain act, ~~thereby~~ estop a municipality from proving the facts.

The whole discussion of the case arises upon a question of irregularity, and a question of irregularity only was involved in the case. Some general language was used in the opinion which might be interpreted to mean that there could be an estoppel in the entire absence of an election, but such general remarks, especially where they go beyond questions involved, are not considered as entitled to greater significance than the actual question before the court would require.

In the case of *Anderson* v. *Santa Anna*, an action arose upon municipal bonds issued by the township of Santa Anna under the law approved February 28, 1867, amending the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company.

The court below sustained a demurrer to the declaration, and amended ~~the~~ declaration, and gave judgment for the township. The question involved in that case seemed to be whether the 17th section of the act of 1857 or the 2d section of the act of 1849, being the original act in the incorporation of the railroad company, authorized the subscription, and whether if the election was unauthorized at the time it took place, the act of February 28, 1867, could be constitutionally construed as legalizing such an election. The authority of the legislature to legalize an election which expresses the will of the people on a proposition of taxation, even though at the time the vote occurred it may not have been authorized by law, by a subsequent act to legalize such act is sustained. This question ~~discussed and held~~ is not involved in the case at bar, nor is the other question ~~involved~~ which is discussed in that case as to whether a negotiable evidence of indebtedness of a municipal corporation being legal at the time of its issue according to the decision of the highest court of the state under whose laws the municipality exists can be affected by subsequent decisions of the same court varying or departing from former decisions. The decision of the Supreme court of the State of Illinois on all the laws involved in the case at bar have been uniform and recognized as such by this court. It does not appear from the record when the plaintiff below obtained the bonds sued on. It would seem that they must have been obtained subsequent to the suit brought by *Warwick and others* against *The Chicago, Danville & Vincennes R. R. Co.* in the Circuit court of Iroquois county, at the November term, 1877. That suit occurred subsequent to the decision of the Supreme court upon the laws involved.

At all events the plaintiff below is not shown by the record to be in the position to invoke benefit of the doctrine in the case last cited. She simply stands in the record as having bought the bonds and coupons in open market in the city of Boston for full value "before the same or any of them were "due." Any time before June, 1881, would satisfy the conditions of this part of the record.

Upon this review of the cases arising under the statutes of Illinois, so far as they involve any question material in this case we are unable to see that there is any principle of estoppel held by this court as applicable to municipal bonds which can be invoked in the case at bar or which in any degree militates against the positions we have taken in former portions of our argument.

We submit, therefore, that according to the well established doctrine of the Supreme court of Illinois, the act of March 7, 1867, gave no authority to issue bonds; that section 5 of article 9 of the constitution of 1848 was a limitation upon the general assembly of Illinois, so that they could not authorize the issuing of bonds without the consent of the municipality; that such consent could not be obtained from or through the supervisor and town clerk of a township, or in any mode, excepting by the vote of the electors of the municipality or through the action of *representative boards*, such as boards of supervisors, of trustees, etc.; that if any act subsequent to March 7, 1867, authorized the electors of Concord township to vote upon the proposition of the issuing of bonds, the electors never took any such vote and never conferred any authority whatever upon supervisor and town clerk; that such supervisor and town clerk never were clothed with any authority which authorized them to bind or represent the township by recitals; that the constitution of 1870 contained a saving clause only as to cases where bonds had already been voted for; that the record in this case shows that the alleged indebtedness exceeded the limitation allowed by the constitution of 1870; that the call of the election and the proposition submitted to the electors and which they approved by their vote contained a condition precedent to the donation taking effect, and if the vote for the donation should be construed as authorizing the issuing of the bonds under any circumstances then a condition precedent also existed to the *power* to issue the bonds, which went to the very substance of the power of the supervisor and town clerk; that, upon authority, there was that total want of power to issue these bonds ~~and~~ that precludes the application of the principles of estoppel as held by this court; that these bonds are therefore void in the hands of a *bona fide* holder, and that for these reasons the judgment of the court below was erroneous.

Respectfully submitted.

BISBEE, AHRENS & DECKER,
Appellants. Attys.

LEWIS H. BISBEE,
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of bonds without the consent of the municipality; that such consent could not be obtained from or through the supervisor and town clerk of a township, or in any mode excepting by the vote of the electors of the municipality or through the action of *representative boards*, such as boards of supervisors, of trustees, etc.; that if any act subsequent to March 7, 1867, authorized the electors of Concord township to vote upon the proposition of the issuing of bonds, the electors never took any such vote and never conferred any authority whatever upon supervisor and town clerk; that such supervisor and town clerk never were clothed with any authority which authorized them to bind or represent the township by recitals; that the constitution of 1870 contained a saving clause only as to cases where bonds had already been voted for; that the record in this case shows that the alleged indebtedness exceeded the limitation allowed by the constitution of 1870; that the call of the election and the proposition submitted to the electors and which they approved by their vote contained a condition precedent to the donation taking effect, and if the vote for the donation should be construed as authorizing the issuing of the bonds under any circumstances then a condition precedent was attached to the power to issue the bonds which went to the very substance of the power of the supervisor and town clerk; that upon all [illegible] there was an entire want of power to issue these bonds and that precludes the application of the doctrine of estoppel [illegible] that these bonds are [illegible] in the hands of [illegible] and that [illegible] reverse the judgment [illegible]

Respectfully submitted,

Bisbee, Ahrens & Decker,

Attorneys [illegible]

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John P. Ahrens,
George Decker,

121-165

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1886.

No. 161.

THE TOWN OF CONCORD,
Plaintiff in Error.

vs.

SYLVIA J. ROBINSON,
Defendant in Error.

Error to the Circuit Court of the United States—The Northern District of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

GEORGE A. SANDERS,
Attorney for Defendant in Error.

SPRINGFIELD, ILL.:
H. W. ROKKER, STATE PRINTER AND BINDER.
1886.

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STATEMENT.

This is a suit in assumpsit, commenced at the October term, A. D. 1881, of the United States Circuit Court, Northern District of Illinois, on bonds and coupons issued by the Town of Concord, Iroquois Co., Ill., to aid in the construction of the Chicago, Danville & Vincennes Railroad, payable to bearer at the Mechanics' National Bank, Chicago,—bonds for $1,000 each, dated Oct. 1, 1871, and due June 1, 1881, with interest at 10 per cent., payable annually June 1. The bonds declared upon were numbered 15, 16 and 17. At the June Term, A. D. 1883, the case was tried by the court,—a jury being waived by agreement of parties, and judgment rendered for the defendant in error herein for $6,350 and costs of suit (Record p. 41). At the request of the counsel for the plaintiff in error herein, the court made a *special* finding, a copy of which is here given. (Record p. 40.)

COPY OF SPECIAL FINDING.

"*First.*—That the statements set forth in the agreement of facts filed in this case are facts in the case.

"*Second.*—That the several acts of the Legislature of Illinois, offered in evidence, were enacted in a constitutional manner, at the several times, as shown by the evidence. That the act of March 7, 1867, was sufficient authority for the issue of the bonds, irrespective of the curative acts of 1869.

"*Third.*—That the three papers offered in evidence by the plaintiff, purporting to be the bonds of the defendant, the town of Concord, and the twenty-one papers purporting to be interest coupons, were executed by G. R. Dunning, the then supervisor, and E. D. Boone, then clerk of said town of Concord, and that their signatures thereto are genuine. That the plaintiff became the owner of said bonds May 9, 1873, paying therefor $3,000, from George C. Marcy, who was the agent for the sale of said bonds, in open market, in good faith, before maturity, and without notice of any defense to same.

"*Fourth.*—That the Chicago, Danville & Vincennes Railroad does not touch either the townships of Concord or Sheldon; that the nearest point of said railroad to said Concord township is four miles west of the northwest corner in the township of Middleport, and the nearest point to Sheldon township is about the same distance west; that said road is about eight and one-half miles away from the village of Iroquois, formerly called the village of Concord, and about three quarters of a mile further from the village of Sheldon; that said railroad company never built any track or line through the townships mentioned; that said railroad company has never run any train through the townships of Concord or Sheldon; that there never was any vote taken in the township of Concord, on the subject of issuing bonds, except as shown by the records set forth in the agreement of facts in evidence in this case; that there was no vote taken to issue bonds to pay the donation to the Chicago, Danville & Vincennes Railroad Company made by said township of Concord.

"That before said bonds were registered in the office of the Auditor of Illinois, the supervisors of said town filed in said Auditor's office an affidavit alleging that all the conditions precedent to the registering of said bonds had been duly complied with, including the building of the railroad; that said bonds were entitled to registry; from which the Court finds that the town is estopped from alleging that the road was not built.

"*Fifth.*—That the total assessed value of the real and personal property, in said town of Concord, for the year of 1869, was $173,897, and for the year of 1871, $156,014.

"*Sixth.*—That the bonds, Nos. 15, 16 and 17, mentioned in said agreement of facts, were and are a part of a series of 25 bonds, numbered from 1 to 25, inclusive, each for the sum of $1,000; and that the other bonds of the same series were issued and delivered to the Chicago, Danville & Vincennes Railroad Company, on or about the 9th day of October, 1871, at the same time, and pursuant to the same proceedings, as were said bonds Nos. 15, 16 and 17.

"*Seventh.*—That a bill of complaint and answer were filed, and a decree entered, in the Circuit Court of Iroquois county, as shown by the bill of exceptions filed herein.

"*Eighth.*—That the plaintiff was and is a holder of these bonds and twenty-one coupons, offered in evidence herein, in good faith for value paid therefor, before maturity thereof." Wherefore, the Court found the issues for the plaintiff, and assessed her damages against the defendant at sixty-three hundred and fifty dollars, and entered judgment for that amount and costs of suit

"H. W. Blodgett, *Judge.*

"Endorsed: Filed August 1, 1883.

"Wm. H. Bradley, *Clerk.*

"To which finding of the Court the said defendant, by its counsel, then and there duly excepted.

"Whereupon said Court rendered a judgment upon said finding in favor of the plaintiff, and against said defendant, for the sum of $6,350 and costs of suit, to the entering of which said judgment the defendant, by its counsel, then and there duly excepted. And, for as much as the matters above set forth do not fully appear of record, the defendant, by its counsel, tenders this bill of exceptions, and prays that the same may be signed and sealed by the Judge of the Court, before whom said cause was heard, in pursuance of law, which is done accordingly.

[SEAL.] H. W. BLODGETT, *Judge*.

"Endorsed: Filed August 1, 1883.

"WM. H. BRADLEY, *Clerk*."

(Record—P. 41.)

On the 20th day of November, 1869, an election was held under the following call:

"The undersigned town officers, and twelve freeholders of the town of Concord, in the county of Iroquois, and State of Illinois, do state, that a special town meeting is necessary to the interests of said town for the purpose of voting a tax to be levied on the taxable property of said town, to the aggregate amount of $25,000, to be assessed and collected in two annual installments, to be donated to the company making the Vincennes, Danville, & Chicago Railroad, provided said company build or make said road through the village of Concord, in said town of Concord, and the town of Sheldon, in Sheldon township. We would therefore request that immediate notice be given thereof, and that such meeting be held on the 20th day of November, A. D. 1869.

"Witness our hands this 9th day of November, A. D. 1869.

"JESSE R. EASTBURN, *Supervisor*.

"EDWARD D. BOONE, *Town Clerk*."

Edward D. Boone, and A. O. Whitman, Justice of the Peace, and twelve freeholders also sign this call.

The election was duly held, and a majority of the voters voted for the proposition thus submitted.

To pay this donation on the 1st day of October, A. D. 1871, the town of Concord issued and delivered its 25 bonds of $1,000 each, due in ten years from date, with interest at 10 per cent. per annum, through its then Supervisor, G. R. Dunning, and its then Clerk, E. D. Boone. These bonds were duly registered by the State Auditor, October 20th, A. D. 1871.

In reference to the execution and delivery of these bonds, *the town records state:*

STATE OF ILLINOIS, }
IROQUOIS COUNTY; } ss.

"Be it remembered, that on the 9th day of October, A. D. 1871, the Supervisor and Town Clerk of the town of Concord, in said county, *in pursuance of law*, proceeded to execute township bonds, numbered from one to twenty-five, consecutively, for one thousand dollars (principal) each, with interest coupons, ten attached to each bond, of one hundred dollars each, payable yearly, at ten per cent. on the principal for ten years, from the first day of June. A. D. 1871, in favor of the Chicago, Danville & Vincennes Railroad Company, *in consideration of said Company having run their road through the villages of Concord and Sheldon, and in accordance with the vote of Concord Township, cast on the 20th day of November, A. D. 1869, donating twenty-five thousand dollars in aid of said Company on conditions above stated.*

"EDWARD D. BOONE, *Town Clerk.*

"Said bonds delivered by me to George R. Dunning, Supervisor."

The Supervisor's affidavite on the registration of these bonds by the State Auditor is as follows:

SUPERVISOR'S CERTIFICATE.

"STATE OF ILLINOIS, }
"COUNTY OF IROQUOIS, }
"*October 19, 1871.* }

"*To the Auditor of Public Accounts of the State of Illinois:*

"SIR—I hereby certify that the following described bonds are entitled to registration in your office, under the provisions of the act entitled 'An act to fund and provide for paying the railroad debts of counties, townships, cities and towns,' in force April 16, 1869, the bonds being numbered from No. 1 to No. 25, inclusive, for $1,000 each, dated June 1st, 1871, and payable June 1, 1881, being, in all, twenty-five bonds, and amounting to $25,000, and bearing interest at the rate of 10 per cent. per annum, payable annually on the first day of June. These bonds are issued by the township of Concord, in the county of Iroquois, and State of Illinois, to the Chicago, Danville and Vincennes Railroad Company, under and by authority of the provisions of an act entitled "An act to authorize cities, towns and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad Company,' approved March 7, 1867, and by a vote of the people of said township, at an election held on the 20th day of November, 1869, *And I, as supervisor of said town, do hereby certify that all the preliminary conditions in the Act in force April 16, 1869, required to be done to authorize the registration of these bonds, and to entitle them to the benefit of said act last referred to, have been complied with to the best of my knowledge and belief.*

"George R. Dunning,
"*Supervisor of Town of Concord.*

"Subscribed and sworn to by the said George R. Dunning, before me, this 10th day of October, A. D. 1871.

"D. W. Ayers, *J. P.*"

COPY OF CALL FOR AN ELECTION TO VOTE FOR $20,000 APPROPRIATION TO THE KANKAKEE & INDIANA R. R. CO.

"*To the Town Clerk of the Town of Concord, in the County of Iroquois, and State of Illinois:*

"The undersigned citizens, freeholders, legal voters and taxpayers of said town, request you to call an election according to law, for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty thousand dollars to the capital stock of the Kankakee & Indiana Railroad Company; said twenty thousand dollars to be in lieu of the twenty-five thousand dollars voted to the Chicago, Danville and Vincennes Railroad Company; and also to vote for rescinding the vote of the 20th of November, A. D. 1869, of twenty-five thousand dollars to the Chicago, Danville & Vincennes Railroad Company, on the conditions that the railroad of said Kankakee & Indiana Railroad Company shall pass through the village of Concord, within eighty rods of the Concord bridge, and a good and sufficient depot be built in the village of Concord, and also a good side track in the same; the road to be completed in one year from this date, and cars running on the same; the company to take township bonds running ten years, at ten per cent. interest per annum, at par value, in full of said twenty thousand dollars, said bonds to commence bearing interest from the date of the completion of said road and the running of the cars thereon; said company failing to comply with the above conditions the promises above stated are null and void.

"Wm. Felton, *Supervisor.*
"Edward D. Boone, *Town Clerk,*
and twelve freeholders."

"Dated May 30, 1870.

Under the above call, the election was held June 30, 1870, and the vote stood 98 for subscription, and 28 against subscription.

On the 20TH DAY OF JUNE, 1870, the Chicago, Danville & Vincennes Railroad Company accepted the $25,000 donation, voted at the election Nov. 20, 1869, in the following notice:

"*To the Supervisor and Town Clerk of the Town of Concord, in the County of Iroquois, and State of Illinois:*

"WHEREAS, Said town of Concord did, on the 20th day of November, A. D. 1869, vote to donate the sum of twenty-five thousand dollars, to aid the Chicago, Danville & Vincennes Railroad Company to construct their railroad; now, therefore, you are hereby notified that they will construct their railroad through or into said town of Concord, in pursuance of the terms and conditions voted by said town, and will demand and claim the amount of money so voted by said town.

"Dated this 20th day of June, 1870.

"BLADES & KAY,
"*Attorneys for C., D. & V. R. R. Co.*"

It is admitted in the stipulations of facts that the Kankakee & Indiana Railroad was never built, nor any bonds issued by the town of Concord to that road, under the vote of June 30, 1870, or any other vote to that road. (Transcript of Record, page 15.)

The defendant in error purchased the bonds and coupons in controversy May 9, 1873, paying therefor $3,000, from George O. Marcey, in Boston, Mass., who had them for sale, in open market, in good faith, before maturity, and without notice of any claimed irregularity or want of power to issue them, and is, therefore, a *bona-fide* owner and holder.

(*Special Findings, Record p. 40.*)

For copies of laws, records of the town and admitted facts, see Appendix.

BRIEF.

There was power to issue the bonds in controversy under the act of the Legislature of March 7, 1867, (Vol. I. Private Laws of Ill. of 1867, p. 842, cited in appendix), and the Circuit Court so held, irrespective of the curative acts of 1869.

(*See special findings, Record p. 40*).

The act of March 7, 1867, and that of March 24, 1869, and February 26, 1869, granting ample power to issue the bonds, were in full force and effect when the vote under which they were issued, November 20th, 1869, was taken, and when the bonds were executed, October 1, 1871, and when they were delivered, October 9, 1871. Record pp. 10 and 13.

The question is one of power. If there was *any* power to issue the bonds and coupons, even though coupled with conditions precedent, shown to have been complied with by the town officials, whose duty it was to determine this fact, the bonds must be held valid in the hands of a *bona fide* purchaser and owner for value, before maturity, and without notice of any claimed want of power or irregularity in their issue.

Nugent v. *The Supervisors*, 19 Wall. 666.
Supervisor v. *Schenck*, 5 Wall. 784.
Gelpecke v. *Dubuque*, 1 Wall. 203.
County of Clay v. *Society for Savings*, 104 U. S. 579.
Commissioners v. *January*, 94 U. S. 202.
Anderson Co. v. *Beal*, 113 U. S. 227.
Pendleton v. *Amy*, 13 Wall. 305.
Van Hostrop v. *Madison*, 1 Wall. 291.
Moran v. *Miami Co.*, 2 Blatch. 722.
Myers v. *Muscatine*, 1 Wall. 384.

Knox v. *Aspinwall*, 21 How. 539.

Town of East Lincoln v. *Davenport*, 94 U. S. 801.

Coloma v. *Eaves*, 92 U. S. 484.

Town of Venice v. *Murdock*, 92 U. S. 594.

Grand Chute v. *Winger*, 15 Wall. 375.

Lincoln v. *Iron Co.*, 103 U. S. 412.

The Supervisor and Town Clerk executing the bonds and coupons, are found by the evidence, the duly elected officials of the town of Concord for that purpose, and their signatures genuine, and the town is *estopped* from denying their acts and statements

Windsor v. *Hallett*, 97 Ill. 204.

Brooklyn v. *Insurance Co.*, 99 U. S. 362.

Marcy v. *Oswego*, 92 U. S. 638.

(*Special findings, Record p. 40.*)

The People ex rel., v. *Holden et al.*, 82 Ill. 93.

Supervisors v. *Town Clerk of La Harpe*, 62 Ill. 62.

The recitals are that *they were issued under and by virtue of a law of Illinois.* Such recitals import a compliance with the statute, and the township, according to the uniform decisions of this Court, is *estopped* to assert, as against a *bona fide* holder, that such recitals are untrue.

Bonham v. *Needles*, 103 U. S. 648.

Buchannan v. *Litchfield*, 102 U. S. 278.

Town of Colma v. *Eaves*, 92 U. S. 484.

A popular election having been held, and a majority of votes cast in favor of the appropriation; it may be conceded that payment of the appropriation could lawfully have been made in town bonds instead of money, if the donation itself was authorized.

Town of Concord v. *Savings Bank*, 2 Otto. 629.

Fairfield v. *County of Gallatin*, 100 U. S. 47.

County of Clay v. *The Society for Savings*, 104 U. S. 579.

The bonds, as far as the power is concerned, may have been issued under either of the acts of March 7, 1869, of March 24, 1869, or February 6, 1869, as all gave power, and were in existence when the vote was taken, the bonds executed and delivered. The recital of the act of March 7, 1867, does not limit or bind the purchaser or holder to that act alone for the power to issue the bonds. It is sufficient for a *bona-fide* holder *that the power existed*, and both courts and purchasers may look beyond the recitals for the power to issue the bonds.

Commissioners v. *January*, 94 U. S. 204.
Anderson Co. v. *Beal*, 113 U. S. 227.
Burr v. *Chariton*, 2d McCrary, 603.
Town of Keithsburg v. *Frick*, 34 Ill., 405.

The recital of the act granting power is not a necessity on a municipal bond. It is valid as negotiable paper under the law merchant where *any* power existed for its issue, even when the source of power is not disclosed or is falsely cited.

Dillon Munic. Corp., Vol. I., 541.
Ackley School Dist. v. *Hall*, 113 U. S. 139.
Mercer Co. v. *Hackett*, 1 Wall. 83.
White v. *Railroad*, 21 How. 576.
Thompson v. *Lee Co.*, 3 Wall. 331.
Commissioners of Marion Co. v. *Clark*, 94 U. S. 278.
Cromwell v. *Co. of Sac*, 96 U. S. 51.

Questions of form merely, or irregularity, or fraud, or misconduct on the part of its agents, can not be considered in a suit of a *bona-fide* holder of bonds or coupons issued by a municipality under authority of law.

Town of East Lincoln v. *Davenport*, 94 U. S. 801.
Town of Rock Creek v. *Strong*, 96 U. S. 271.

These bonds in this suit appearing regular on their face in every particular, we think the doctrine of *equitable estoppel* is applicable.

Commissioners v. *January*, 94 U. S. 202.
Marsh v. *Fulton Co.*, 10 Wall. 684.

The town of Concord could not rescind the proposition made by the vote of November 20, 1869, which had been accepted by the railroad company June 20, 1870, by the vote of the town of June 30, 1870.

Nugent v. *The Supervisors*, 19 Wall. 247.

ARGUMENT.

In *Portsmouth Savings Bank* v. *Concord*, 92 U. S. 625, some coupons claimed to be detached from bonds issued by the town of Concord were declared repugnant to the Constitution of the State of Illinois, and not in the saving proviso, *because they were detached from bonds issued to pay a donation*,—this Court at that time making a distinction between *donations* and *subscriptions* voted to aid railroads under the Constitution and Statutes of Illinois then in force. The State Supreme Court had passed upon that question in *C., D. & V. R. R. Co. et al.* v. *Smith*, 62 Ill. 268 to 277, at its September term, A. D., 1871, in which they held that there *was no distinction* between *subscription* and *donation* aid voted to railroads under the Constitution and laws of Illinois then in force. This decision was rendered more than a year *before* that in 92 U. S. 625, *supra*, and was not brought to the attention of this Court when its decision *supra* was made.

At the October term, 1879, this Court, in *Fairfield* v. *County of Gallatin*, 100 U. S. 47, revoked its decision in 92 U. S., *supra*, in accordance with its rule to follow the uniform decisions of the highest State Courts, when prior jurisdiction was obtained in interpreting the Constitution and laws of their several States, when no Federal question was involved, and held, that "where, pursuant to the authority conferred by the legislative enactment, *such donation* was voted by a county in Illinois before the adoption of the Constitution, the donation may thereafter be completed by the issue of the requisite bonds."

From that time to the present, through a long line of decisions by the State Supreme Court, and this Court, no distinction in law has been recognized between *donation* and *subscription* aid voted to railroads in Illinois. In *Railroad Co.* v. *County of Otoe*, 16 Wall. 667, it was held, "that in the absence of constitutional provisions, making a distinction between municipal subscriptions to stock and municipal appropriations of money, or credit, there was no valid ground upon which, so far as legislative power was concerned, to rest such a distinction."

Olcott v. *The Supervisors*, 16 Wall. 678.
Town of Queensbury v. *Cutter*, 16 Wall. 83.
New Buffalo v. *Iron Co.*, 105 U. S. 76.

In view of the above decisions, the bonds in controversy are not to be discriminated against because issued to pay a donation, but are to be treated in every respect as if they had been issued to pay for stock subscribed for, in the road to which the donation was voted and the bonds given.

The constitution of 1870 excepts from its provisions and operations the right of any municipality to make subscriptions, (*or donations*,) where the same have been authorized under existing laws, by a vote of the people of such municipalities, prior to such adoption.

Article of amendment of *Constitution of 1870. See Appendix.*

Fairfield v. *County of Gallatin*, 100 U. S. 48.

County of Warren v. *Marcy*, 97 U. S. 104–108.

Town of Coloma v. *Eaves*, 92 U. S. 484–488.

Chicago & Iowa R. R. Co. v. *Pinckney*, 74 Ill. 278.

Town of East Lincoln v. *Davenport*, 94 U. S. 801.

Town of Middleport v. *Ins. Co.*, 82 Ill. 562.

Laws of Ill., 1877, p. 144.

Laws of Ill., 1874, p.

The admitted facts (Record p. 12) show that there was an election legally called and held in the town of Concord, Iroquois Co., Ill., on the 20th day of November, 1869, and a majority of the votes cast were in favor of a donation in aid of the Chicago, Danville and Vincennes Railroad Co., of $25,000. The prohibitory amendment of the Constitution of 1870 has been held by both State Supreme Court and this court, as being in effect *when voted upon July 2, 1870.*

Wade v. *Walnut*, 105 U. S. 1, *and citations.*

Wade v. *Lamoille*, 112 Ill. 79, *and citations.*

The vote being *prior to July 2, 1870, was within the proviso* of the Constitution of 1870, and there being no distinction between *donations* and *subscriptions*, it was *the contract* on the part of the town, to aid the road $25,000, when the railroad company should accept it, and perform the required conditions. On the 20th day of June, 1870, (Record p. 13) the railroad company formally, and in writing, accepted the offer and agreement, and the terms and conditions prescribed by the vote of Nov. 20, 1869.

This court say, *Fairfield* v. *Co. of Gallatin*, 100 U. S. 51:

"It thus appears to have become a rule of property in the State, (Ill.) that municipal bonds issued to railroad companies on account of donations voted by the people before the adoption of the Constitution, *are valid*, though not issued until after the adoption."

The case at bar is now released from all embarrassments of repugnance to the Constitution of 1870, and of prejudice on the ground of being called an appropriation, or donation, or tax, in the proposition submitted at the election of Nov. 20, 1869, instead of being called a subscription.

On the 9th of October, 1871, the supervisor and town clerk of of the town of Concord, "*in pursuance of law*, executed twenty-five bonds for $1,000 each, with coupons attached for interest for $100 each; the bonds payable in ten years from June 1, 1871, in favor of the Chicago, Danville & Vincennes Railroad Company, *in consideration of said company having run their road through the village of Concord and Sheldon, and in accordance with the vote of Concord township, cast on the 20th day of November, A. D. 1869, donating $25,000 in aid of said company on the conditions above stated*," as the town records show. (Record p. 13).

The record is here complete as to the vote and the issue of the bonds, and that all the conditions precedent had been complied with by the railroad company. If there was legislative authority to authorize this action of the town of Concord, these bonds must be held good under the admitted facts.

It is uncertain, from the recitals and admitted facts, under which of the legislative acts then in force the officials acted in the vote and issue of the bonds in question. For on the bonds they cite *the caption* of the act of March 7, 1867, (Record p. 10), and in the bonds, as to rate of interest and where payable, they follow the terms and conditions of the act of February 6, 1869 (Record p. 17). This is clear, as the bonds are made payable in Chicago, and this is the *only act* that designates *where* they shall be paid. They are usually payable in New York, or at the place of issue. The act of March 7, 1867, *did not in terms provide for* *the issue of bonds*, it only provided for the voting of a donation of $25,000, to be raised by two tax levies. The act of February 26, 1869, *in terms provides for the issuing of bonds*, and makes them payable in Chicago, to pay these appropriations or donations to the Chicago, Danville & Vincennes Railroad. (Sec. 3, Record p. 17). In the affidavit of George R. Dunning, supervisor, made to the State Auditor for registration of the bonds, he states that they were issued under the act of March 7, 1867.

But it matters not which act they cite, or attempt to recite, in the bonds, or whether they recite any act at all, the facts and recitals clearly show that they were issued "*under authority of law*," and "*in pursuance of law*." Both of these acts, as also the curative act of March 24, 1869, (Record p. 18,) *antedate* the call for the election November 20, 1869, and the execution and delivery of the bonds, October 1 and 9, 1871. The power to create the debt carries with it the obligation to pay it. Municipalities generally have no way to pay their debts but by taxation and issuing bonds. In *Town of Concord* v. *Portsmouth Savings Bank*, 92 U. S. 629, this Court say: "A popular election having been held and a majority of votes cast at the election having been in favor of the appropriation, *it may be conceded that payment of the appropriation could lawfully have been made in town bonds instead of money*, if the donation was authorized." There can *now be no doubt*, under numerous decisions, that the donation was legally authorized by the three acts above cited.

The Circuit Court says, in *special finding*, (Record p. 40):

> "*Second.* That the several acts of the Legislature of Illinois, offered in evidence, were enacted in a constitutional manner at the several times, as shown by the evidence, *that the act of March 7, 1867, was sufficient authority for the bonds irrespective of the curative acts of 1869.*"

In *County of Clay* v. *Society for Savings*, 104 U. S. 579, a case very analogous to the case at bar, in which there was an issue of $100,000 *subscription* bonds and $50,000 *donation* bonds, to aid a railroad, with *conditions precedent* recited on the face of the bond. on an election held April 22d, 1868. This Court say:

> "The recital of the bonds are that *they were issued pursuant* to the orders of the Board, successor of the County Court, as authorized by virtue of the laws of the State of Illinois, is equivalent to a declaration by the Board, upon the face of the bond, that the election had been held and had resulted so as to authorize the lawful issue of the bonds. When the bonds are in the hands of a *bona fide* holder this recital is conclusive and binding upon the municipality."

Town of Colma v. *Eaves*, 92 U. S. 484.

Marcy v. *Township of Oswego*, 92 U. S. 481.

A case can scarcely be found with more ample legislative power for the issue of the bonds. We think it is ample in the act of March 7, 1867; but if not there, it certainly exists in the acts of February 6, and March 24, 1869, where bonds are specially authorized to pay the appropriations or donations. Counsel for plaintiff in error will doubtless claim that while the act of March 7, 1867, authorized the donation, it did not provide for the issue of bonds in payment thereof. But we think we have fully met that objection in the cases above cited. And even if there was any force in it, the *bona fide* owner and holder, as in the case at bar, has a right to rely upon any law in force at the time the vote was taken, and the bonds issued, for the power, even though a wrong or false recital is placed upon the bond.

In *Commissioners* v. *January*, 94 U. S. 202, this Court say as to false recitals:

> "This act (that of 1869), like the act of 1868, authorized the commissioners to issue bonds when the requirements of the law had been complied with. They were constituted a tribunal for

the adjustment of all questions touching the subject. They were clothed with the power and charged with the duty to decide them. No appeal or review was provided for. Their issuing the bonds was the reflex and embodiment of their judgment that it was proper to do so. It implies a prior determination to that effect. That fact carries with it this presumption: The bonds recite that they were issued in conformity to law, and in pursuance of the election held on the 6th of April, 1869. *It is true, they refer to the wrong statute*, but *false demonstratio non nocet. The bad here does not hurt the good.* The act of the commissioners was the act of the county, and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no question involving the infirmity of the securities can be raised."

Again, in *Anderson* v. *Beal*, 113 U. S. 227, this Court say: "The bond recites the wrong act (that of 1866), but if that of the recital *be rejected*, there remains the statement that the bond 'is executed' in pursuance of the vote of the electors of Anderson county, of September 13, 1869." In the case at bar, if we reject reject all of the recital that refers to the act of March 7, 1867, we shall then have, "*this bond is issued under and by virtue of a law of the State of Illinois*," with all of the terms and place of payment, provided for in the act of Feb. 6, 1869, and a good, valid bond in every respect, under the doctrine laid down in the last two cases cited.

In case of *Gelpcke* v. *City of Dubuque*, 1 Wall. 203, the language of the Court is: "*Where a corporation has power, under any circumstances, to issue negotiable securities*, the *bona-fide holder has a right to presume they were issued under the circumstances which give the requisite authority*, and they are no more liable to be impeached for any infirmity in the hands of such a holder, than any other commercial paper." This doctrine is so well established, and has been so constantly affirmed, that nothing more can be said upon it.

Supervisors v. *Schenck*, 5 Wall. 784.

Commissioners Knox Co. v. *Aspinwall*, 21 How. 539.

Lexington v. *Butler*, 14 Wall. 282.

Wilmoth v. *Crawford*, 16 Wendell, 343.

Alleghany City v. *McClurken*, 14 Penn. State, 83.

"A *bona-fide* purchaser of negotiable paper for value, before maturity, takes it freed from all infirmities in its origin, unless it is absolutely void for want of power in the maker to issue it."

County of Sac v. *Cromwell*, 96 U. S. 51.

"If a municipal corporation, in dealing with individuals, assumes that it possesses certain corporate powers, upon which the validity of its acts depends, and it turns out that it does not possess the specific powers relied on, it is not thereby excused from the performance of its obligations, IF THEY CAN BE PERFORMED THROUGH THE AGENCY OF OTHER POWERS THAT IT DOES POSSESS."

Maher v. *City of Chicago*, 38 Ill. 373.

The town of Concord did assume to have specific power from the Legislature to call the election, hold the same, issued its $25,000 of bonds, sold them to innocent, *bona-fide* purchasers for a valid consideration, paid interest for a time, and now seeks to avoid their payment on the ground that *its own officers recited on the bonds, through carelessness, fraud or misconduct, the wrong act as the source of power, when there were two other acts in existence, giving ample power for the vote and the issue of the bonds.* To maintain such a defense to the bonds would overrule a long line of decisions of this Court, and doctrines elementary in their nature, and be a monstrous injustice. It would give the officials of the town, by false or fraudulent recitals, power to defeat almost any issue of such bonds, and make their mere recitals superior to legislative acts and elementary principles of law, and annul the decisions of the highest judicial tribunals in the land.

In this direction we cite:

Johnson Co. v. *January*, 94 U. S. 202.

Anderson v. *Beal*, 113 U. S. 227.

There seems, from the whole record, no want of power to issue these bonds in controversy, nor any serious defect in the recitals of the source of power, if that was necessary. The purchaser was bound to know that *power existed to issue the bonds.* Suppose she had investigated. She would have found the recitals of the caption of the act of March 7, 1867, on the bonds, and the terms and conditions and place of payment, as required by the act of Feb. 7, 1869; That the vote might have been taken and election held under either of the acts of March 7, 1867, or March 24, 1869; the result of the election; (Record p. 12) the record of the issue of the bond, and their delivery *in pursuance of law.* (Record p. 13); the affidavit of the supervisor made to the State Auditor, not only *purporting* that all preliminary conditions had been complied with, but *that they actually had been complied with. All this she would have found with the three acts of the Legislature granting the power, as record evidence to support the bonds.* What more could be required to make a valid bond? But if there was any defect in the recitals of the wrong source of the power, it is *non-essential,* and must be considered as an "*irregularity*" in the exercise of the power under a long line of cases in this court, a few of which we cite:

County of Warren v. *Marcy,* 97 U. S. 104.

Commissioners v. *Bolles,* 94 U. S. 104.

Township of Empire v. *Darlington,* 101 U. S. 87.

Marcy v. *Town of Oswego,* 92 U. S. 638.

Town of Coloma v. *Eaves,* 92 U. S. 484.

ESTOPPEL.

If there was power to issue the bonds, the town of Concord is estopped from denying the record evidence of her own officials charged with the duty of determining that fact, that all the preliminary conditions in the issuing of the bonds were complied with, by the railroad company, in a case like this, where the owner and holder of the bonds is proved to be a *bona fide* purchaser for value, before maturity, and without notice. (Record p. 40.)

Town of Coloma v. *Eaves*, 92 U. S. 484.
Humboldt Township v. *Long*, 92 U. S. 642.
Pendleton County v. *Amy*, (13,) Wall. 305.

The supervisor and town clerk, the legally constituted authorities for executing such town bonds, were the duly elected and acting officers at the time, and their signature on the evidence were found genuine. (Special Finding; Record p. 40). The bonds recite that they were issued "under and by virtue of a law of the State of Illinois." The town records show an election held "pursuant to legal notice," and a majority of the votes cast in favor of the proposition submitted. (Record p. 13). That the supervisor and town clerk "in pursuance of law," and in accordance with the vote of Concord township, cast 20th of Nov., A. D. 1869, executed and delivered the bonds in controversy. (Record p. 15).

The supervisor, for their registration by the State Auditor, swears that all the preliminary conditions have been complied with, to the best of his knowledge and belief, (Record p. 11) which, according to the special finding of the Circuit Court, "*included the building of the railroad.*" (Record; special finding, p. 40).

Wade v. *Walnut*, 103 U. S. 693.
Town of Windsor v. *Hallett*, 97 Ill. 204.

Under such state of facts as this, whether there was any railroad built or not makes no difference whatever, in this case, as far as the rights of this *bona fide* holder is concerned. It is sufficient under the law to validate these bonds that the officials of the town, charged with that power, have certified when they offered their bonds for sale, that all precedent conditions, imposed by the vote, even to the building of the road, had been complied with on the part of the railroad, and the town is now estopped from denying their validity. There is no better settled principle in bond litigation than this. This court say: "When, therefore, they make a subscription, and issue county bonds in payment, it may fairly be presumed in favor of an innocent purchaser of the bonds, that the conditions which the law attached to the exercise of the power have been fulfilled."

Pendleton v. *Amy*, 13 Wall. 305.
Van Hostrop v. *Madison*, 1 Wall. 291.
Myers v. *Muscatine*, 1 Wall. 384.
Bind v. *Jeffersonville*, 24 How. 287.

Under the facts in this case the town is estopped from denying the validity of the bonds in this suit.

Lynde v. *The County*, 16 Wall. 13.
Supervisor v. *Schenck*, 5 Wall. 772.
Harter v. *Kernochen*, 103 U. S. 562.
Bonham v. *Needles*, 103 U. S. 648.
Buchannan v. *Litchfield*, 102 U. S. 278.
County v. *Amy*, 13 Wall. 305.
Knox Co. v. *Aspinwall*, 21 How. 539.
Wade v. *Walnut*, 103 U. S. 693.

While we think the above doctrines and citations abundantly cover the case at bar, and that under them the bonds must be held good, yet there is another view of the case, perhaps hardly necessary to suggest, that the bonds and coupons are valid obligations of the town of Concord *under the law merchant* and independent of all recitals. We have shown that there was power

under the three acts of the Legislature, and that there was a fair, legal election, and a majority of votes cast for the creation of the debt. That the bonds are payable to bearer, and have all the incidents and qualities of a promisory note, independent of any and all recitals.

Dillon on Munic. Corp., Vol. I., 541.
Ackley School Dist. v. *Hall*, 113 U. S. 139.
Mercer v. *Hackett*, 1 Wall. 331.
Thomson v. *Lee County*, 3 Wall. 331.
Commissioners v. *Clark*, 94 U. S. 278.
Cromwell v. *Co. of Sac*, 95 U. S. 51.

The Town of Concord could not rescind the contract made by the vote of Nov. 20, 1869, *after it was accepted by the Railroad Co., June* 20, 1870.

Counsel for plaintiff in error may attempt to show that the power to issue the bonds in question was abrogated or destroyed by the vote of June 30, 1870,—but such a position is untenable. The record of admitted facts shows that the vote under which these bonds were issued was taken Nov. 20, 1869, and the railroad company to whom they were voted and issued accepted the donation and conditions on which it was made, on the *20th day of June*, 1870, (Record p. 13), and the bonds issued and delivered October 1 and 9, 1871.

The records of the town also show, that on the 30th day of May, 1870, a call for an election was issued, and an election was held *June* 30, 1870, to vote for or against subscribing $20,000 to the Kankakee & Indiana Railroad Company, and rescinds the vote donating $25,000 to the Chicago, Danville & Vincennes Railroad, of Nov. 20, 1869. A majority of votes cast at this election were in favor of the proposition, as shown by the records of the town. (Record p. 15).

And that the Indiana & Kankakee Railroad *was never* built, and the conditions in the call for the election were never complied with, and no bonds ever issued to that road. (Record p. 15.) The only question here is, could the town of Concord, by the election of June 30, 1870, *rescind its vote, which was equivalent to a subscription and its part of a contract* donating $25,000 to aid the road, Nov. 20, 1869, *after an acceptance of it by the railroad company, June* 20, 1870, *and ten days before the election of June* 30, 1870, *was held*, on the acceptance by the railroad of the donation and the terms and conditions on which it was offered by the vote of Nov. 20, 1869. The contract was then complete. Both parties had the power lawfully to make such a contract. Suppose, which was undoubtedly the fact, that *after the vote of Nov.* 20, 1869, the railroad company had gone forward for six months, and made large contracts, and expended large sums of money for labor and materials, relying on the aid voted by the town of Concord, and other towns along the line. If this was not a contract that could be enforced by the railroad company against these towns, then if that vote of Nov. 20, 1869, was not a binding contract on the towns, they could, by a simple vote, after the road was practically built, and before a train was run over it, simply rescind their votes of aid, keep the road, enjoy all of its benefits, and refuse to pay the agreed consideration therefor. No court has ever sanctioned such a doctrine. The proceedings of June 30, 1870, in the call and the election, were *ultra-vires*, and could not affect the vote and contract of Nov. 20, 1869.

In *Nugent* v. *The Supervisors*, 19, Wall. 247, this Court say:

> "There was not only the resolution declaring the subscription made, but there was an acceptance by the railroad company, and notice of the acceptance. The minds of the parties came together. *Both understood that a contract was made.* * * * So the parties regarded their relations to each other. The bonds

were delivered. The committee appointed by the Board of Supervisors to protect the interest of the county, under whose direction the bonds were ordered to be issued, were satisfied that all the conditions precedent to their delivery had been complied with, and they so decided. The county accepted the position of stockholder, received certificates for stock, voted as a stockholder, and proceeded to levy a tax to pay interest falling due on the bonds. Were this all the case, the validity of the bonds, and of their accompanying coupons in the hands of a *bona-fide* holder, for value, would be beyond doubt."

In all essential particulars, the above is the case at bar, as far as the validity of the contract, made by the vote of Nov. 20, 1869, and the acceptance of it by the railroad company, is concerned. The act of the town in making the contract does not rest upon the vote simply, but *after* the *ultra-vires action of the town, of June* 30, 1870. This same town, by its duly authorized officials, *ratify, confirm, endorse and perfect their contract of Nov.* 20, 1869, *with this same railroad company, by executing and delivering the bonds, issued in accordance with that vote, enter their acts on the town records, swear to the State Auditor that the bonds were issued in pursuance of that vote, and that all conditions to complete the demands of the vote have been complied with by the railroad company, and levy taxes to pay the same for interest on the bonds for a time.*

If there ever was a perfected, executed contract by and between parties, this certainly is one.

In *Nugent vs. Supervisors, supra.* This court further say: "The American authorities are equally explicit. They uniformly assert that the subscriber for stock is released from his subscription by a subsequent alteration or purpose of the company *only when such alteration is both fundamental and provided for or contemplated by either the charter itself or general laws of the State.*"

In the case above cited, *there is only one condition for releasing the subscription*, and as we have shown there is in law now no distinction between donations and subscriptions, the principle applicable is the same to both classes of bonds. In the case at bar, there is *not only no subsequent alteration of the organization or purpose of the railroad company, but absolutely no provision for such alteration in the charter or State laws.*

EQUITABLE ESTOPPEL.

These bonds in this suit appearing regular on their face, and endorsed by the Auditor of State's Certficate of Registration, importing that there was power to issue them, and that the power had been legally executed, and that all conditions precedent had been complied with, the doctrine of equitable estoppel may also be invoked to support their validity. If there was any fraud or failure to properly issue the bonds, it was all on the part of the town and its officials, and they, if any one, should suffer the loss consequent on their acts. The defendant in error was a *bona fide* purchaser, investor and holder of the bonds for par cash value on the open market, and cannot be made to suffer loss under the circumstances of this case. "Common honesty demands that a debt thus incurred be paid."

Commissioners etc., vs. Bolles, 94 U. S. 104.

Commissioners vs. January, 94 U. S. 204.

As to the bill of injunction to restrain the collection of taxes introduced in, (Record p. 35), and all proceedings in connection therewith, it is sufficient to say that the defendant in error is in no way affected thereby. She was *not a party to the bill* or any of its proceedings, and cannot be bound by them, or her rights thereby be affected in any way. The bill was filed in the State Court, at the November term, 1877. The decree seems to have been rendered January 13, A. D. 1882. (Record p. 39).

The special findings, (Record p. 40), shows that the defendant in error purchased the bonds in controversy. Three of them for

$3,000, in open market, in good faith, before maturity, and without notice of any defense to same, *May* 1, 1873, *more than four years before the bill was filed in the State Circuit Court.* It is thus seen that she was, at the time of her purchase, a citizen of another State, and was not party to the proceedings in the State Court. A party cannot be brought into a State Court *as an unknown bondholder*, that is a citizen of another State, and be bound by any proceedings in such case. This question is well settled by this court, in *Pennoyer vs. Neff*, 95 U. S. 728.

Bowler & Merrill vs. Town of Pana, 107 U. S. 529.
And cases cited.

In the *special finding*, (Record p. 40, *fifth*) the court found the total assessed value of the real and personal property in said town of Concord, for the year of 1869, was $173,897, and for the year 1871, $156,014.

This is introduced to show, if possible, a debt beyond the constitutional limitations. This debt of the town of Concord, evidenced by the bonds, of which these in controversy are a part, was contracted *when the vote was taken*, *Nov.* 29, 1869, as all the record evidence shows. That the bonds were issued on *that vote*, and by authority of the Act of March 7, 1867, or under the Acts of February 6, 1869, and March 24, 1869. The Constitution of 1848, *then in force* when the vote was taken, and the acts above passed *does not limit the rate or amount that municipal corporations may levy and collect for payment of their debts contracted under authority of law*. It says, *Art. 11, Sec. 5:*

"The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly

shall require that all the property within the limits of municipal corporations, belonging to individuals, shall be taxed for the payment of debts contracted under authority of law."

This section of the Constitution (and this is all there is on the subject) does not limit the rate or amount that may be levied and collected to pay debts thus contracted. These corporations may levy and collect for corporate purposes, all that the Act of the Legislature may allow.

Voting aid to railroads as quasi-public corporations, has been held by State Supreme Courts, and this court, to be for a corporate purpose.

Chicago, Danville & V. R. R. Co. v. *Smith*, 62 Ill. 268.
Perkins v. *Lewis*, 24 Ill. 208.
Butler v. *Dunham*, 27 Ill. 473.

And the corporate authorities in towns are the voters.

Chicago, Danville & V. R. R. Co. v. *Smith*, 62 Ill. 268.

The voters of Concord were the corporate authorities who created the debt under Legislative authority of Acts of March 7, 1867; under Act of March 24, 1869, Sec. 4, (Record p. 49), the authorities of the town are authorized "*to levy and collect such taxes as may be necessary to pay accruing interest, or pay the principal sum.*"

Under the Act of Feb. 6, 1869, said towns, "shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal when it shall become due."

Under act of March 7, 1867, "The authorities * * * are hereby authorized and required *to levy and collect a tax, and make such provisions as may be necessary and proper* for the prompt payment of the appropriations under the provisions of this law." All of these acts give ample power to levy and collect taxes necessary to pay interest and principal of this debt; nor are they in this, or any other respect, repugnant to the Constitution of 1848. (Special finding, *Second*, Record p. 40). It may be claimed, however, that this is a debt under the Constitution of 1870, in force July 2, 1870, because the bonds were dated Oct. 1, and delivered Oct. 9, 1871. The holder of the bonds is entitled to have her bonds paid in accordance with the laws as they were at the time the debt was contracted. If the debt was contracted by the vote, and the bonds only the evidence of the debt, then the constitution of 1848, and acts under it and their provisions must control. But if *the bond* is the debt, and the obligation goes no farther back than the date of the bond, then the constitution of 1870, and its terms, would control the levies and collection of taxes.

Sec. 12, of art. 11, of the constitution of 1870, is as follows, to-wit:

> "No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and County taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall, before, or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due; and, also, to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this Constitution in pursuance of any law providing therefor." (Hurd's Statues of Ill., 1885, p. 69).

This town of Concord, therefore, under any view, or under either Constitution, that of 1848 or that of 1870, had legislative authority not in conflict with constitutional prohibitions to levy and collect taxes sufficient to pay the interest and principal of the bonds of the issue of Oct. 1, 1871, of which these in suit are a part.

Under the Constitution of 1848, there was no limit to the power to levy and collect taxes to pay interest and principal on bonds issued under authority of law, and under that of 1870 this issue of bonds IS ESPECIALLY EXCEPTED FROM ANY OF ITS PROHIBITIONS OR LIMITATIONS OF THE TAXING POWER TO PAY "*bonds issued in compliance with any vote of the people which may have been had prior to the adoption of this Constitution (that of* 1870) *in pursuance of any law providing therefor.*" The vote on these bonds was November 20, 1869, and *prior* to the adoption of the constitutional amendment of prohibition, *July* 2, 1870, and the Constitution itself, August 8, 1870.

It would be an impairing of the obligations of contracts to allow the limiting provisions of the Constitution of 1870 on the taxing power to be applied to this case.

This Court say, *Fairfield* v. *County of Gallatin*, 100 U. S. 51:

> "It thus appears to have become a *rule of property* in the State (of Illinois), that municipal bonds issued to railroad companies on account of donations voted by the people before the adoption of the Constitution are valid, though not issued until after the adoption Such was the earliest exposition of the Constitution, made by the Court of last resort in the State, twice since recognized by it, and recognized also by repeated legislative action. There is every reason to believe that the rule has been relied upon, and that on the faith of it many municipal bonds have been issued, bought and sold in the market of the country."

If the issuing of bonds to pay donations voted before the adoption of the constitution of 1870 *is a rule of property* in this State, supported by Supreme Court decisions and legislative acts, and by this Court, and such bonds *are valid*, these bonds in the case at bar can not be affected in any way by the Constitution of 1870 in their payment.

In *Von Hoffman* v. *City of Quincy*, 4 Wall. 555, this Court say:

> "It is equally clear, that where a State has authorized a municipal corporation *to contract and exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given can not be withdrawn until the contract is satisfied.* The State and corporation in such cases is equally bound. The power given becomes a trust which donor can not annul, and which the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other."

People v. *Bell*, 10 California, 570.

Dominic v. *Sayre*, 3 Sanford, 555.

Under any possible view that may be taken of this case, there seems to be no constitutional or statutory objection that can be urged against the power to issue these bonds, or to levy sufficient taxes to pay the same; nor do we think there is any other objection that can in the least affect their validity.

The equities of the case are with the defendant in error; the call for the election, the holding of the election, the issue and delivery and registration of the bonds, were all "under and by virtue of a law of the State of Illinois," in accordance with law, and "in pursuance of law." The precedent conditions, the officials of the town, whose duty it was to determine that fact, swear and certify were all complied with by the railroad company when they were executed, registered and delivered. They were placed upon the open market, covered with official certificates of town and State officers, that they were issued under authority of law, and that all requirements of law had been complied with, and purchased by the holder in good faith before due and without notice, and the interest levied and paid for a time; *and why should they not be paid under such circumstances?*

We ask that the judgment of the Circuit Court be affirmed.

GEORGE A. SANDERS,
For Defendant in Error.

APPENDIX.

The following are the several legislative enactments and the admitted facts and records of the town relied upon for the power to issue the bonds involved in this suit:

ACT OF MARCH 7, 1867.

"AN ACT to authorize cities, towns or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad." (In force March 7, 1867.) Private laws of Illinois, vol. 1, 1867, p. 842.

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all incorporated towns and cities, and towns acting under the township organization law, which lie wholly or partly within twenty miles of the east line of this state, and also between the city of Chicago and the southern boundary of Lawrence county, be and the same are hereby severally authorized to appropriate such sums of money as they may deem proper to the Chicago, Danville and Vincennes Railroad Company to aid in the construction of the road of said company, to be paid to said company as soon as the track of said road shall have been located and constructed through said city, town or township, respectively: *Provided, however,* that the proposition to appropriate moneys to said company shall be first submitted to a vote of the legal voters of said respective townships, towns or cities, at a regular annual or special meeting, by giving at least ten days notice thereof: and a vote shall be taken thereon by a ballot, at the usual place of election, and if the majority of votes cast shall be in favor of the appropriation, then the same shall be made, otherwise not.

"SEC. 2. The authorities of said townships, towns or cities, respectively, are hereby authorized and required to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation, under the provisions of this law.

"Sec. 3. *And be it further enacted:* That all the taxes heretofore voted in any and all of the townships, towns or cities along the line of the aforesaid road, in aid of the construction of said road, are hereby legalized and declared valid.

"Sec. 4. *And be it further enacted:* That any and all of said townships, towns or cities, within the county of Iroquois, and along said line of road as aforesaid, may vote for or against such taxes, conditioned that the town of Watseka, in said county, shall be made a point on said road, and in case a sufficient amount of such conditional taxes be voted in said Iroquois county to build the additional length of road required to make said town of Watseka a point in the same, then and in that case said road shall be so located as to run through or adjoining said town of Watseka.

"Sec. 5. This act shall take effect and be in force from and after its passage."

Approved March 7, 1867. Laws of Illinois, 1867, vol. 1, pp. 842 and 843.

Act of February 26.

Found in Vol. 3, Private Laws of Illinois of 1869, p. 355.

"An Act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville and Vincennes railroad.

"Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the taxes, aids and appropriations heretofore voted by towns, townships or cities along the proposed route of the Chicago, Danville and Vincennes railroad, or in the vicinity of said railroad, be, and the same are hereby, legalized, ratified and confirmed, and the appropriations so made by the township of Yellowhead, in the county of Kankakee, on the 8th day of June, 1868, is hereby legalized and made valid: *Provided*, said road shall run through said township of Yellowhead. This section shall not apply to the townships of Butler, Georgetown and Ellwood, in the county of Vermillion.

"Sec. 2. Said towns, townships, or cities shall be liable to pay said donations, aids, or appropriations upon the terms and conditions by them voted whenever said railroad shall be completed into or opposite said towns, townships, or cities, as the case may be.

"Sec. 3. For the purpose of facilitating the payment of the said aids, contributions, or appropriations, when the time of payment shall arrive, as herein before provided, the proper authorities of said towns, cities, or townships are authorized and required to levy and collect a sufficient per cent. to meet and liquidate said aids, contributions, or appropriations, or said towns, cities, or townships may borrow money and issue bonds therefor for the purpose of paying said aids, which said bonds may be sold in or without this State, and at prices as said towns, townships, or cities may deem for their best interests, and shall not bear a greater rate of interest than ten per centum per annum, and may provide that the interest be payable semi-annually, and may provide that the principal and interest be paid in the city of Chicago, and said towns, townships, or cities shall have power to levy and collect taxes, as other taxes are levied and collected, to provide for the payment of accruing interest, and for the payment of the principal sum when it shall become due.

"SEC. 4. Be it further enacted, that a certain order, or resolution of the board of supervisors of the county of Iroquois, passed by said board on the 17th day of September, 1868, and a certain other order, or resolution of said board, passed on the 18th day of September, 1868, extending the aid or credit of said county to assist the Chicago, Danville and Vincennes Railroad Company in the construction of their railroad, be, and the same are hereby legalized, ratified and confirmed, and said orders, or resolutions, shall be in full force and effect upon the terms and conditions in said orders, or resolutions, expressed.

"SEC. 5. This act shall be a public act, and be in force from and after its passage.

"Approved February 26, 1869."

ACT OF MARCH 24, 1869.

Found in Vol. 3, Private Laws of Illinois of 1869, p. 356.

"**AN ACT** to enable towns, townships, cities or counties along the line of the Chicago, Danville and Vincennes Railroad to contribute toward the construction of said railroad.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the several counties through which the Chicago, Danville and Vincennes Railroad shall pass, are hereby authorized by action of the board of supervisors, or by action of the county court in counties not acting under township organization, to make appropriations, or loan the credit of such county or counties, in such sum or sums, and upon such terms and conditions, as they may deem proper, to extend and furnish aid to the Chicago, Danville and Vincennes Railroad Company in constructing the said railroad; *Provided*, that the question as to whether such county or counties shall make appropriation, or loan the credit of such county, as hereinbefore stated, be first submitted to the legal voters of such county by said board of supervisors, or county court, as the case may be, at any regular or special election called for that purpose, twenty days' previous notice for which shall have been given, designating the amount proposed to be so contributed to said railroad, and a majority shall have voted for the same. The posting of said notices, shall, in other respects, be regulated by the law now in force concerning the posting of notices for the election of county officers.

"Sec. 2. The legal voters of any town, township or city along the line of said railroad, whether said railroad shall run into or through said town, township or city, or not, may, by a majority of the legal voters voting at any election held for the purpose, make appropriations, or donations, to aid in the construction of said railroad; and the proper authorities shall levy and collect taxes, in the manner that other taxes are levied and collected, to promptly meet any obligations assumed under and by virtue of this act.

"Sec. 3. Whenever any township shall desire to contribute toward the construction of said railroad, as provided in section two of this act, the vote may be taken at any regular or special meeting, and if at any special town meeting, may be called as now provided by law for such meetings; and whenever the voters of any town or city shall desire to contribute toward the construction of said railroad, a special election may be held by the proper authorities of any such town or city, upon giving ten days' notice in any newspaper published in such town or city, or by posting up written or printed notices in four public places in said town or city, of the time, place and object of such elections; or such appropriations may be voted at any regular election in town or city. The votes at any election held in any incorporated town or city, for the object herein mentioned, shall be canvassed and returned as at any other election in said town or city; and in all cases the notices given shall specify particularly the amount to be voted for or against at such election, and in no case shall the appropriation exceed the amount specified in the notice or notices.

"Sec. 4. The authorities of any township, town or city,—such township, town or city having voted to contribute aid in the construction of said railroad,—may borrow money to promptly meet such contribution, and issue bonds of such township, town or city, at a rate of interest not exceeding ten per centum per annum, payable annually, or semi-annually, as they may deem best, and may negotiate the same on such terms as they may deem advisable, and may make the same payable at such place or places, and payable at such time or times, as they may deem for their best interests, and shall have power to levy and collect such taxes as may be necessary to pay accruing interest, or pay the principal sum.

"Sec. 5. In all cases when any township, town or city shall have voted to contribute aid as hereinbefore provided toward the construction of said railroad, the amount or amounts so voted shall become due and payable as soon as said railroad shall be completed into or opposite to any such township, town or city.

(Sections 6 and 7 refer only to right of way, and are material to no issues in this case).

"Sec. 8. All aids, contributions or appropriations heretofore voted or ordered in the counties of Cook, Will, Kankakee, Iroquois and Vermilion, either of township, towns, cities or counties, are hereby ratified and confirmed, upon the terms and conditions by them, or each of them, so voted or ordered: *Provided*, that this section shall not apply to the townships of Butler, Georgetown and Ellwood, in the county of Vermilion, nor to the appropriation made by the county of Vermilion by its board of supervisors.

"Sec. 9. This shall be a public act, and shall be in force from and after its passage."

Approved March 24, 1869. Laws of Illinois, 1869, vol. 3, pp. 358 and 359.

REGISTRATION LAW.

In force April 16, 1869.

"Sec. 2. Registration of bonds. And the county clerk or other proper officers, upon the issuing of the bonds in payment of said railroad debt, shall make a registration thereof in the book to be kept for that purpose in his office, showing the date, amount, number, maturity, and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given. And said bonds, and the bonds heretofore issued and still unpaid, in order to receive the benefits of this act, shall be registered *by the holder thereof* at the office of the Auditor of Public Accounts, who shall cause the same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity, and rate of interest of such bond, under what act and by what county, township, city or town issued; and the Auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which registration and certificate the Auditor shall be entitled to a fee of $1 from the *holder of each bond*.

"Sec. 7. Condition of registration.] And it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the advantages to be derived from this act, until after the railroad in aid of the construction of which the debt was incurred, shall have been completed near to or in such county, township, city or town, and cars shall have run thereon; and none of the benefits, advantages, or provisions of this act shall apply to any debt unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city or town, under the provisions of the laws of this State, and a majority of the legal voters living in said county, township, city or town were in favor of such aid, subscriptions, or donation, and any county, township, city or town, shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions, or donations, shall be made, and such bonds, subscriptions, or donations, shall not be valid and binding until such conditions precedent shall have been complied with, and the presiding judge of the county court, or the *supervisor of the township*, or the chief executiue officer of the city or town that shall have issued bonds to any railway or railways, immediately upon the completion of the same near to, into, or through such county, township, city or town, as may have been agreed upon, and the running of the cars thereon, shall certify, under oath, that all the preliminary conditions in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act, have been complied with, and shall transmit the same to the State Auditor with a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company, and under what law issued, and thereupon said bonds shall be subject to registration by the State Auditor, as hereinbefore provided."

SEPARATE ARTICLE OF AMENDMENT.

Submitted for ratification by the People, July 2, 1870.

"No county, city, town, township, or other municipality, shall ever become a subscriber to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of such corporation: *Provided, however*, that the adop ion of this article shall not be construed as affecting the right of any such municipality to make such subscription where the same has been authorized under existing laws by a vote of the people of such municipalities prior to such adoption." *Constitution of Illinois*, 1870.

ACT FOR LIMITING THE TIME OF ISSUING BONDS IN AID OF RAILROADS.

Laws of Illinois, 1877, *p.* 144.

"*Be it enacted, etc.* That an act entitled 'An act to limit and determine the time for which counties, cities, townships, towns and precincts in this State shall be liable and holden to issue aid for the building of any railroad in pursuance of any vote taken in conformity to the laws of this State, approved March 17, 1874,' be amended so as to read as follows:

"That the liability of all counties, cities, townships, towns or precincts, which have voted aid, or donations, or subscriptions to the capital stock of any railroad company in conformity to the laws of this State for the building of any railroad to, into, through or near such county, city, township, town or precinct, to issue such voted aid, shall cease and determine upon and after the 1st day of July, A. D. 1880, and no bonds shall be issued, or stock subscribed to any such railroad company after that date upon account of or upon the authority of such vote: *Provided*, that this act shall not apply in any case where the express conditions of the vote for such aid shall extend the time for the building of such railroad beyond said date.

"*And it is further provided*, That this act shall not apply to any case where any railroad shall have been built, or shall before said date be built, in accordance with the conditions of the vote for aid to such railroad.

"*And it is further provided*, That this act shall not apply to any case where such aid shall have been deposited, or shall before said date be deposited, with any trustee or trustees, upon written or printed conditions, to be delivered to said railroad company at some future time: *Provided further*, that this act shall not be construed so as to require any county, city township, town or precinct to issue, pay or deliver any such aid or bonds where the same may have been voted and subscribed upon any condition or conditions which shall not be complied with within the time expressed in the notice of election, proceedings or vote authorizing such aid to be paid or given."

ADMITTED FACTS.

UNITED STATES OF AMERICA,

Northern District of Illinois.

OCTOBER TERM, A. D. 1881.

SYLVIA J. ROBINSON

vs.

TOWN OF CONCORD.

It is hereby stipulated by and between Sanders & Williams, attorneys for plaintiff, and Bisbee & Ahrens, attorneys for defendant, that the following copies of the record of the Town of Concord, and statements following, are admitted facts as evidence in this case.

That Sylvia J. Robinson, the plaintiff, is a citizen of the State of Maine.

That the Town of Concord is a corporation organized and existing under the township laws of the State of Illinois, and a citizen of the Northern District of Illinois, located in Iroquois county, Illinois, and was such long prior to the commencement of this suit.

That the following is a copy of bond No. 15, and that all the other bonds referred to in the declaration are a *fac simile* of it, save as to the No. of the bonds:

"United States of America,

"State of Illinois,

"No. 15. Concord. $1,000

(Vignette.)

"Township Railroad Bond.

"Know all men by these presents, That the township of Concord, in the county of Iroquois, and State of Illinois, acknowledges itself to owe and be indebted in the sum of One Thousand Dollars, lawful money of the United States of America, which sum of money the said township of Concord promises to pay to the bearer, at the Mechanics' National Bank, Chicago, on the first day of June, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per cent. per annum, which interest shall be payable yearly on the first day of June, in each year, at the Mechanics' National Bank of the city of Chicago, upon presentation and delivery of the warrants or coupons severally hereto annexed, until the payment of said principal sum.

"This bond is issued under and by virtue of a law of the State of Illinois, to authorize cities, towns, or townships, lying within certain limits, to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes railroad, and the faith of the said township of Concord is hereby pledged for the payment of said principal sum and interest aforesaid.

"In witness whereof, the supervisor and clerk of said township of Concord have subscribed this bond, the first day of October, one thousand eight hundred and seventy-one.

"G. R. Dunning, E. D. Boone,
Supervisor. *Clerk.*"

[Revenue Stamp.]

(Endorsed.)

"Auditor's Office, Illinois,

"Springfield, October 20th, 1871.

"I, Charles E. Lippincott, Auditor of Public Accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled 'An act to fund and provide for the paying the railroad debt of counties, townships, cities and towns,' in force April 16th, 1869.

[Seal.] "In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

"C. E. Lippincott, *Auditor P. A.*"

The following is a copy of coupon due June 1, 1881, from bond No. 15, and all the other coupons in the declaration described are *fac similes* of said coupons, save as to serial numbers of bonds, from which they were cut, or detached, and the time when they mature:

"CONCORD TOWNSHIP.

"*Railroad Bond.*

"$100. INTEREST WARRANT. No. 15.

"On the first day of June, 1881, the Town of Concord, Iroquois county, State of Illinois, will pay the bearer one hundred dollars at the Mechanics' National Bank of the city of Chicago, being one years' interest on bond numbered as above.

"G. R. DUNNING, E. D. BOONE,
"*Supervisor.* *Clerk.*"

Bonds were registered by the Auditor of State of Illinois.

SUPERVISOR'S CERTIFICATE.

STATE OF ILLINOIS,
COUNTY OF IROQUOIS,
October 19, 1871.

To the Auditor of Public Accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th, 1869,—the bonds being numbered from No. 1 to No. 25, inclusive, for $1,000 each, dated June 1st, 1871, and payable June 1st, 1881,—being, in all, twenty-five bonds, and amounting to $25,000, and bearing interest at the rate of ten per cent. per annum, payable annually on the 1st day of June. These bonds are issued by the township of Concord, in the county of Iroquois, and State of Illinois, to the Chicago, Danville and Vincennes Railroad Company, under and by authority of the provisions of an act entitled "An act to authorize cities, towns and townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville and Vincennes Railroad Company," approved March 7th, 1869, and by a vote of the people of said township, at an election held on the 20th day of November, 1869. And I, as supervisor of said town, do hereby certify that all the preliminary conditions "in the act in force April 16th, 1869," required to be done to authorize the registration of those bonds, and to entitle them to the benefit of said act last referred to, have been complied with, to the best of my knowledge and belief.

George R. Dunning,
Supervisor Town of Concord.

Subscribed and sworn to by the said George R. Dunning, before me this 10th day of October, A. D. 1871.

D. W. Ayers, *J. P.*

Auditor's Office, Illinois,
Springfield, October 17th, 1881.

I, Charles P. Swigert, Auditor of Public Accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full and correct copy of certificate of George R. Dunning, as supervisor of Concord township (Iroquois county), in relation to registration of bonds issued by said township to the Chicago, Danville and Vincennes Railroad Company, now on file in, and forming part of, the records of this office.

SEAL In testimony whereof I hereby subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

Charles P. Swigert,
Auditor of Public Accounts.

COPY OF CALL FOR SPECIAL ELECTION OF 20TH DAY OF NOVEMBER, A. D. 1869.

"The undersigned town officers and twelve freeholders of the town of Concord, in the county of Iroquois and State of Illinois, do state, that a special town meeting is necessary to the interests of said town for the purpose of voting a tax to be levied on the taxable property of said town to the aggregate amount of twenty-five thousand dollars, to be assessed and collected in two annual installments, to be donated to the company making the Vincennes, Danville and Chicago Railroad; provided said company build or make said road through the village of Concord, in said town of Concord, and the town of Sheldon, in Sheldon township. We would therefore request that immediate notice be given thereof, and that such meeting be held on the 20th day of November, A. D. 18 9.

"Witness our hand this 9th day of Novemer, A. D. 1869

"Jesse R. Eastburn, *Supervisor.*
"Edward D. Boone, *Town Clerk.*"

Edward D. Boone, and A. O. Whitman, justice of the peace, and twelve freeholders also sign this call.

COPY OF MINUTES OF SPECIAL TOWN MEETING.

"Minutes of a special town meeting, held (pursuant to legal notice posted ten days previous to said meeting in five of the most public places in the town of Concord, as required by law,) in the school house in the village of Concord, on the twentieth day of November, A. D. 1869, for the purpose of voting for or against levying a tax on the taxable property of said town of Concord, amounting in the aggregate in two years to the sum of twenty-five thousand dollars, to be donated to the Vincennes, Danville and Chicago Railroad Company, provided said company run said railroad through the villages of Concord and Sheldon, and to take such measures in pursuance ot law as may be considered necessary to carry the objects into effect.

"Which meeting was called to order at the hour of 9 o'clock, A. M., by Edward D. Boone, Town Clerk, and on motion of Willliam Felton, Jesse R. Eastburn was chosen moderator to preside at said meeting, who being duly sworn according to law, entered upon the discharge of the duties of his office. After the organization of the meeting and proclamation made according to law, the polls were opened and the electors proceeded to vote as is the law and custon at town meetings until the close of the polls, and after canvassing the votes we found the result to be, for the tax had 66 votes, against the tax had 53 votes.

"Meeting adjourned *sine die*.

"Jesse R. Eastburn, *Moderator*,
"Edward D. Boone, *Town Clerk*."

NOTICE OF ACCEPTANCE OF THE DONATION BY THE RAILROAD COMPANY.

"*To the Srpervisor and Town Clerk of the Town of Concord, in the County of Iroquois, and State of Illinois:*

"Whereas, said town of Concord did, on the 20th day of November, A. D. 1869, vote to donate the sum of twenty-five thousand dollars to aid the Chicago, Danville and Vincennes Railroad Company to construct their railroad. Now, therefore, you are hereby notified that said railroad company do accept said offer and agreement of said town to aid them in the construction of their railroad, and you are further notified that they will construct their railroad through or into said town of Concord in pursuance of the terms and conditions voted by said town, and will demand and claim the amount of money so voted by said town.

"Dated this 20th day of June, 1870.

[Signed.] "Blades & Kay,
"*Att'ys for Chicago, Danville and Vincennes Railroad Co.*

COPY OF TOWN RECORD—OF EXECUTION AND DELIVERY OF BONDS.

STATE OF ILLINOIS, }
IROQUOIS COUNTY, } ss.

"Be it remembered that on the 9th day of October, A. D. 1871, the supervisor and town clerk of the town of Concord, in said county, *in pursuance of law*, proceeded to execute township bonds, numbered from one to twenty-five consecutively, for one thousand dollars (principal) each with interest coupons, ten attached to each bond, of one hundred dollars each, payable yearly at ten per cent. on the principal, for ten years, from the first day of June, A. D. 1871, in favor of the Chicago, Danville and Vincennes Railroad Company, *in consideration of said company having run their road through the villages of Concord and Sheldon, and in accordance with the vote of Concord township, cast on the 20th day of November, A. D.* 1869, *donating twenty-five thousand dollars in aid of said company on the conditions above stated.*"

Said bonds delivered by me to George R. Dunning, Supervisor.

EDWARD D. BOONE, *Town Clerk.*"

COPY OF CALL FOR ELECTION TO VOTE FOR $20,000 APPROPRIATED TO KANKAKEE AND INDIANA R. R. CO:

"*To the Town Clerk of the Town of Concord, in the County of Iroquois, and State of Illinois:*

"The undersigned, citizens, freeholders, legal voters and taxpayers of said town, request you to call an election according to law, for the purpose of permitting the legal voters of said town to vote for or against subscribing twenty thousand dollars to the capital stock of the Kankakee and Indiana Railroad Company,—said twenty thousand dollars to be in lieu of the twenty-five thousand dollars voted to the Chicago, Danville and Vincennes Railroad Company,—and also to vote for rescinding the vote of the twentieth day of November, A. D. 1869, of twenty-five thousand dollars to the Chicago, Danville and Vincennes Railroad Company, on conditions that the railroad of said Kankakee and Indiana Railroad Company shall pass through the village of Concord, within eighty rods of the Concord bridge, and good and sufficient depot be built in the village of Concord; and also a good side-track in the same, the road to be completed in one year from this date, and cars running on the same,—the company to take township bonds, running ten years, at ten per cent. interest per annum, at par value, in full of said twenty thousand dollars, said bonds to commence bearing interest from the date of the completion of said road and the running of the cars thereon; said company failing to comply with the above conditions, the promises above stated are to be null and void.

"Dated May 30, 1870.

(Signed,) "WM. FELTON, *Supervisor,*
"EDWARD D. BOONE, *Town Clerk,*
"and twelve freeholders."

NOTICE OF AN ELECTION.

"An election will be held at the school house in the village of Concord, on Thursday, the 30th day of June, A. D. 1870, to vote for or against subscribing $20,000 to the Kankakee and Indiana Railroad Company, and rescinding the vote donating $25,000 to the Chicago, Danville and Vincennes Railroad Company, cast at an election held on the 20th day of November, 1869, on condition that said Kankakee and Indiana Railroad company run their said railroad from Lafayette, Indiana, to Kankakee City, Illinois, through the town of Concord, in the township of Concord, Iroquois county, and State of Illinois, within eighty rods of the bridge across the Iroquois river at said town of Concord, and build a side track and a good and sufficient depot in said town within one year from the date of this election, to-wit: the 30th day of June, 1870, and to have the cars running the whole route in the same time, and the said $20,000 all to be paid in township bonds, bearing ten per cent. interest per annum, in favor of said company, in full of said subscription, in ten years from the date of the completion of said railroad and running of the cars thereon.

"Dated this 30th day of May, 1870.

EDWARD D. BOONE, *Town Clerk.*"

[Copy of minutes of special election held June 30th, 1870:]

"STATE OF ILLINOIS, } ss.
IROQUOIS COUNTY, }

"Minutes of meeting held pursuant to foregoing notice:

"Meeting called to order by E. D. Boone, town clerk. On motion, John B. Hill was chosen moderator, who, being duly sworn according to law, entered upon the duties of his office. E. D. Boone was sworn as clerk of said election. After an address by Dr. Nott and further remarks by E. D. Boone, the election proceeded until six o'clock P. M. Polls closed after proclamation, and the presiding officers proceeded to canvass the polls. The following is the statement of the result of the canvass of votes as publicly canvassed by the presiding officer at said election:

"For subscription had ninety-two votes.

"Against subscription had twenty-eight votes.

bonds to commence bearing interest from the date of the completion of said road and the running of the cars thereon: said company failing to comply with the above conditions, the promises above stated are to be null and void.

"Dated May 30, 1870.

(Signed,) "WM. FELTON, *Supervisor*,
"EDWARD D. BOONE, *Town Clerk*,
"and twelve freeholders."

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"Dated this 30th day of May, 1870.

EDWARD D. BOONE, *Town Clerk*."

Copy of minutes of special election held June 30th, 1870:

"STATE OF ILLINOIS,
IROQUOIS COUNTY, } ss.

"Minutes of meeting held pursuant to foregoing notice:

"Meeting called to order by E. D. Boone, town clerk. On motion, John B. Hill was chosen moderator, who, being duly sworn according to law, entered upon the duties of his office. E. D. Boone was sworn as clerk of said election. After an address by Dr. Nott and further remarks by E. D. Boone, the election proceeded until six o'clock P. M. Polls closed after proclamation, and the presiding officers proceeded to canvass the polls. The following is the statement of the result of the canvass of votes as publicly canvassed by the presiding officer at said election:

"For subscription had ninety-two votes.

"Against subscription had twenty-eight votes.

121-165

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CLERK.

ADDITIONAL BRIEF.

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1886

No. 161.

THE TOWN OF CONCORD,

v.

SYLVIA J. ROBINSON,

BY GEORGE A. SANDERS,

For Defendant in Error

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1887.

ADDITIONAL BRIEF.

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1886

No. 161.

THE TOWN OF CONCORD,

v.

SYLVIA J. ROBINSON.

BY GEORGE A. SANDEES,

For Defendant in Error

I desire to file an additional brief in this case, as counsel for plaintiff has argued some points which I did not consider of sufficient importance to argue at length in my first brief filed.

The counsel for plaintiff in error claims a total variance between the bonds offered in evidence and those described in the declaration in the suit in the circuit court. He claims that the bonds offered in evidence were dated *June 1, 1871*, and the bonds declared upon as of *the 1st day of October, A. D. 1871*.

The case he cites in support of his claim,—*United States* v. *Le Baron*, 4 Wall. 642, is against him. This court say, in that case:

> "When a contract is alleged by the pleadings to have been made on a certain day, it is no variance to offer in evidence a written contract which took effect on a *different day.*"

Counsel raised the same question in the court below, and on the evidence offered the Circuit Court found no such variance to exist (Record p. 32 and p. 40).

The bonds sued on were dated *June 1, 1871*, and *due June 1, 1881*, as registered by the Auditor of State (Record p. 11). Bond No. 15, a copy of which is given, (Record p. 10, *as an admitted fact*) gives date as *October 1, 1871*, and due *June 1, 1881*. The declaration in the special count (Record p. 3) states, "bearing the signatures of G. R. Dunning, supervisor, and E. D. Boone, clerk of said township, as of the 1st day of October, 1871, and each of said bonds of same form, tenor and effect," etc., and *has also the common counts.*

In every other respect the special count in the declaration agrees in every particular with the bonds and coupons offered in evidence.

Under the practice in this State, it is sufficient if the instrument offered in evidence is sufficiently described in the declaration to meet and support the main averments. Here the parties to the suit, the amounts involved, when and where payable, rate of interest, object for which issued, laws under which issued, railroad to which issued, names of supervisor and clerk issuing the bonds, are fully set up in the special count, so that there could be no possible difficulty in identifying the bonds and coupons offered in evidence with those named in the declaration.

The State Supreme Court say, 43 Ill., *Streeter* v. *Streeter*, 156:

"*But under the common counts, if the declaration contains them, a promissory note of any date could be introduced in evidence, upon proof of its execution, as at common law.*"

VERDICT CURES DEFECTS IN PLEADINGS.

In *Lincoln* v. *Iron Co.*, 103 U. S. 415, this court **say**:

"It is a rule of the common law, that where there is a defect or omission in a pleading, whether in substance or form, which would have been fatal on demurrer, yet, if the issue joined be such as necessarily required on the trial proof of the facts so defectively stated or omitted, and without which it is not to be presumed that the judge would have directed the jury to give the verdict, such defect or omission is cured."

1 Wm. Sand. 228.

Even if there was any variance that would have any force or effect, under any circumstances in the case, between the declaration and the instruments offered in evidence, we cannot see how the counsel of the plaintiff could, in any way, avail himself of it, for he admits, in *admitted facts* (Record, 10), that the copy there given of *bond No. 15 is a fac-simile of all the other bonds, and that copy closes with "In witness whereof, the supervisor and clerk of said township of Concord have subscribed this bond this first day of October, one thousand eight hundred and seventy-one." E. D. Brown, clerk. G. R. Dunning, supervisor.*

Rock Creek Township v. *Strong*, 96 U. S. 271.

ESTOPPEL.

Counsel for plaintiff in error insist that the supervisor and clerk have no authority to bind the town, by their certificate to the Auditor, for registration of the bonds, and entries in the town records, as to the performance of conditions precedent by the railroad company. But that question has long since been fully settled by this court and the State Supreme Court of Illinois.

This court say, in *Northwestern Bank* v. *Porter Tp.*, 110 U. S. 619:

> "The question of *legislative authority* in a municipal corporation to issue bonds in aid of a railroad company, cannot be concluded by mere recitals; but the power existing, the municipality may be estopped by recitals to prove irregularities in the exercise of that power; *or, when the law prescribes conditions upon the exercise of the power granted, and commits to the officers of such municipality the determination of the question whether those conditions have been performed, the corporation will be estopped by recitals which import such performance.*"

We cite, in support of this,

Bissel v. *City of Jefferson*, 24 How. 287.

Buchannon v. *Litchfield*, 102 U. S. 278.

County of Warren v. *Marcy*, 97 U. S. 96.

Com'rs of Johnson Co. v. January, 94 U. S. 202.

Com'rs of Douglas Co. v. *Bolles*, 104 U. S. 104–108.

Town of Coloma v. *Eaves*, 92 U. S. 484–488.

Lynde v. *The County*, 16 Wal. 6.

Knox v. *Aspinwall*, 21 How. 544.

Mercer County v. *Hackett*, 1 Wall. 83.

St. Joseph Tp. v. *Rogers*, 16 Wall. 644.

Van Hortrop v. *Madison City*, 1 Wall. 291.

In *Wade* v. *Walnut*, 103 U. S. 693, the very questions are decided that the counsel raises in the case at bar. In that case, this court say:

> "It is contended by the plaintiff in error that under the act referred to, the *corporate authorities* of the township alone could make this subscription to the stock of the railroad company, and issue the bonds of the township. This claim is based on sec. 5, art. 9, of the constitution of Illinois of 1848, which prohibits the Legislature from authorizing any person to impose a burden of debt on the township, *except the corporate authorities*."

The stock was subscribed and the bonds were issued in this case by the supervisor and clerk, and it is insisted that neither the act of the Legislature nor the constitution of the State allowed this to be done; that it could only be done by the corporate authorities, which included the legal voters as well as the supervisor and clerk.

In construing a similar statute, passed under the constitution of 1848, *the Supreme Court of Illinois has decided that, "after a vote of the electors of a township in favor of a donation to aid in the construction of a railroad, the supervisor and clerk of the township were the proper authorities to subscribe for the stock of the company, and issue the township bonds therefor."*

Town of Windsor v. *Hallett*, 97 Ill. 204.

Town of Douglas v. *Niantic Savings Bank*, Ill.

In *Town of Venice* v. *Murdock*, 92 U. S. 498, this court say:

> "They (the supervisors and commissioners) did decide the question before they issued the bonds, their statement, verified by their affidavit, filed in the county clerks office, was a decision, and *the recitals in the bonds was a declaration of the decision*, that such a decision concludes the towm against denying that the condition precedent had been performed, that it relieves the holder of the bonds from the obligation to look beyond it, is too firmly settled in this court to admit of question.

Dillon on Municipal Corps. Sec. 418, says: "If, upon a true construction of the legislative enactment conferring the authority, the corporation, or certain officers, or a given body or tribunal, are invested with power to decide whether the condition precedent has been complied with, then it may well be that their recital of their determination of a matter *in pais*, which they are authorized to decide, will, in favor of the bond holder for value, bind the corporation." Sec. 419, id. Dillon, further says: "Where both parties have not equal means of knowledge as to the extent and scope of their powers (the officers issuing the bonds) and where the particular character of their commission and authority is from its nature and circumstances, peculiarly known to the officer or agent, in which case the principal will, or may be, bound by the false representations of the agent respecting its extent or scope."

Township of Rock Creek v. *Strong*, 96 U. S. 291.

In the case at bar the supervisor and town clerk had the means of knowing whether the conditions precedent had been complied with, but Mrs. Robinson, the purchaser of these bonds in Boston, had to rely upon statements of these corporate agents made upon the bonds.

In *Kennicott* v. *The Supervisors*, 16 Wall. 464, the language of this Court is:

> "The following propositions may be considered settled in this court:
>
> "1. If an election or other fact is required to authorize the issue of the bonds of a municipal corporation, and if the result of that election, or the existence of that fact is by law to be ascertained and declared by any judge, officer or tribunal, and that judge, officer or tribunal, on behalf of the corporation, executes or issues the bonds, with a recital that the election has been held, *or that the fact exists*, or has taken place, this will be sufficient evidence of the fact to all *bona fide* holders of the bonds.
>
> "2. If there be lawful authority for the municipality to issue its bonds, the omission of formalities and ceremonies, *or the existence of fraud on the part of the agents of the municipality issuing the bonds, cannot be urged against a bona fide holder seeking to enforce them.*"

Grand Chute v. *Winegar*, 15 Wall. 355.
Commissioners of Knox Co. v. *Aspinwall*, 21 How. 539.
Gelpecke v. *Dubuque*, 1 Wall. 203.
Moran v. *Miami Co.* 2 Black, 722.
County of Moultrie v. *Savings Bank*, 92 U. S. 631.
San Antonio v. *Mehaffy*, 96 U. S. 312.

The doctrine seems, therefore, well settled, that the statements of the corporate official, whose duty it is to determine that the conditions precedent have been fulfilled by the railroad company, before the issue of the bonds, will bind and estop the town from denying such statements when the bonds are in the hands of a *bona fide* purchaser, in a contest for their payment.

We have shown that the supervisor and the town clerk were the proper officers to execute the bonds, if the power existed for the town to issue any bonds.

There can be no doubt but that the supervisor swore in his certificate that all preliminary conditions necessary to have the bonds registered by the State Auditor had been complied with (Record, p. 11), *and that the building of the railroad was the important preliminary condition*, moreover, *the supervisor* in towns *is especially named to make the affidavit for registration under the registration act of the Legislature* in the following language:

> "And the presiding judge of the county court, *or the supervisor of the township*, or the chief executive officer of the city or town that shall have issued bonds to any railway or railways immediately upon the completion of the same near to, into, or through such county, township, city, or town, as may have been agreed upon *and the running of the cars thereon, shall certify under oath* that all the preliminary conditions in this act required to be done to authorize the registration of such bonds and to entitle them to the benefits of this act have been complied with," etc., (Record, p. 23.)

Again, under township organization, the supervisor and clerk have been held, by all laws and decisions of courts, as *the officials* to execute all town bonds and make the necessary certificate as to compliance of all preliminary conditions before the execution of town bonds; and we have been unable to find a case where *any other* official ever acted in such capacity. There is no town officer who could so act by virtue of his office. The court found that the supervisor and clerk of the Town of Concord *were then the supervisor and clerk, and that their signatures to the bonds and coupons offered in evidence were genuine.* (Record, p. 40.)

The town clerk was also the proper officer to keep the records of the town (Rev. Stat. Ill. Township Organization, Art. 12, sec. 112, p. 2,426), and such records of the town are evidence in any court. (Ibid. Art. 12, sec. 117.) He is also especially named to keep such a record of bonds issued by the town, in the registration act of April 16, 1869, under which the bonds in controversy were registered, in the following language to-wit:

> "And the county clerk, *or other proper officer*, upon the issuing of the bonds in payment of said railroad debt, *shall make a registration thereof in the book to be kept for that purpose in his office, showing the date, amount, number, maturity and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given.* (Record, p. 21, sec. 2.)

The town clerk of Concord township undertook to comply with, not only his duties that arose under the statute, to keep a record of the proceedings of the town and its officials, but the requirements of the Legislative act of registration, *supra*, and made his record in the town records (Record, p. 13), where he states the execution and delivery of the bonds, in consideration of said company having run its road through the villages of Concord and and Sheldon, and "*in accordance with the vote of Concord township, cast on the 20th day of November, A. D. 1869, donating $25,000 in aid of said company, on conditions above stated.*"

This record it was his duty, by statute and legtslative act, to make on the books of the town. The records of the town are by statute made evidence (*supra*) in any court. How, then, can it it be claimed that these officers had not the power and did not bind the town by their records and estop it from denying the statements lawfully made by its own duly elected officials, whose duty it was to make the statements as to the fulfillment of the conditions precedent.

Bigelow on Estoppel, 530-533, and citations.

If there was power to create the debt there was power to issue bonds to pay the same.

Counsel claims that there was no power to issue bonds in payment of the donation voted by Concord township, November 20, 1869. That if there was any debt created by that vote it could only be paid by two annual installments of taxation, but we think the rule of law is against him.

In *Seybert* v. *City of Pittsburg* 1 Wall. 272, this court say:

> "An authority given by act of legislature to a city corporation to subscribe for stock in a railroad company as fully as any individual, *authorizes also the issue by the city of its negotiable bonds in payment of the stack.*"

In *Reinboth* v. *Council of Pittsburg*, 41 Penn. 278, the language of the court is:

> "The power given to the corporation to subscribe; *was a power to create a debt and consequently to give an evidence of the debt.* The authority given, was to subscribe as fully as an individual; and as an individual (by agreement with the company) could have given his bond, the city corporation had the same power, that grants of corporation are strictly construed in favor of the public; but it would be a perversion of the rule to permit a corporation to use it to defraud its creditors, or protect itself against its own assumed obligations. *If they legally owe a debt, it follows that they can give a bond for it.*"

This case is cited with approval by this court in case of *Seybert* v. *City of Pittsburg, supra.*

Mercer Co. v. *Hacket*, 1 Wall. 83.

Again, where a municipal corporation was authorized to subscribe to the stock of a railroad company, and to borrow money to pay for the stock subscribed, the Supreme Court of Pennsylvania held, in *Middleton* v. *Allegheny Co.* 37 Penn. St. 241, that issuing of their bonds, as a means of making the payment, *was borrowing money* for that purpose, within the meaning of the provision conferring the power, especially as it appeared that the bonds had been received in payment of the subscription."

The power granted the municipality to borrow money to pay its donation, carries with it the power to issue and sell its bonds to pay the same.

The Act of March 7, 1867, provides that "the authorities of said townships, towns, or cities, respectively, are hereby authorized and required *to levy and collect a tax, and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this act.* We submit that this clause, "*and make such provisions as may be necessary and proper for the prompt payment of the appropriation,*" gives power by implication, if not by absolute direction, to issue bonds of the town, since that is the only method by which it could make "*prompt payment of its appropriation,*" and that such must have been the intention of the voters when the debt was created, inasmuch as the raising of money by taxation requires time and delay, and is not *a prompt method of payment.*

Sec. 3 of the act of Feb. 26, 1869, authorizes "townships to *borrow money, and issue bonds therefor, for the purpose of paying said aids*, which bonds may be sold in or without this State."

Sec. 4 of act of March 24, 1869, authorizes "*townships to borrow money to promptly meet such contributions, and issue bonds,*" etc. (Record pp. 16, 17, 18.)

These acts *were all in force when* the votes was taken and bonds issued.

This court has held that where there was legislative authority given to a municipality to subscribe to the stock of a railroad company, and *to borrow money* to pay for said stock, it could issue its bonds in payment thereof.

In *Meyer* v. *City of Muscatine*, 1 Wall. 384, the language is:

"The authority to issue the bonds in payment of the subscription to the railroad stock, *is by clear implication* of the act of Jan. 25, 1855. *What is implied, has the same effect as what is expressed.*"

United States v. *Babbit*, 1 Black. 55.

In *Rogers* v. *Burlington*, 3 Wall. 654, the language of the court is:

"Power to borrow money for any public purpose gives authority to a municipal corporation to borrow money to aid a railroad company, making its road a way of public travel and transportation: *and as a means of borrowing money to accomplish this object, such municipal corporation may issue its bonds, to be sold by the railroad company, to raise money.*"

From these citations it appears a settled rule that municipalities *may issue bonds to pay a legal debt*, and to pay *money borrowed, without a vote of the electors on the question of issuing bonds*, which is claimed necessary by counsel for plaintiff in error. If the electors create the debt by their vote, it can be paid by the issuing of bonds for payment, that power being implied in the vote to create the debt.

Counsel claim that the acts of February 26, '69, and of March 24, '69, have been held void by the Supreme Court of Illinois, in *Middleport* v. *Ætna Life Ins. Co.* 82 Ill. 562.

In reply to that, we say the Circuit Court, in the case at bar, found (Record, p. 40), 2d:

"*That the several acts of the Legislature of Illinois, offered in evidence, were enacted in a constitutional manner at the several times, as shown by the evidence. That the act of March 7, 1867, was sufficient authority for the issue of the bonds, irrespective of the curative acts of 1869.*"

The State Court, in *Middleport* v. *Ins. Co., supra*, held the act of Feb. 26, 1869, void, as embracing more than one subject in its title, and being a private or local law. This decision has been overruled by this court.

San Antonio v. *Mehaffy*, 96 U. S. 312.

As to the act of March 24, 1869, the State Court in the *Middleport* v. *Ins. Co.*, *supra*, held it practically in accord with the constitution, but *retrospective* in its effect, and therefore of no effect in that case. That was, perhaps, true of the facts presented in that case, for the vote there was had *June 8, 1867*, while the vote in the case at bar was had Nov. 20, 1869, *after all three of the acts had been passed and were in force*, and therefore, whatever may be said of the force of the opinion as to the case then considered. It has no application to the case at bar, and has been overruled time and again.

We now consider the cases of

> *Aspinwall* v. *Commissionerss of County of Daviess*, 22d How. 364, and
>
> *Wadsworth* v. *Supervisors*, 102 U. S., 534.

Counsel for plaintiff in error relies on the above cases as fatal to the power to make a contract and create a debt, and as enabling the town of Concord to rescind the vote of Nov. 20, 1869, by that of June 30, 1870, in the case at bar.

But it will be observed that these cases and the one at bar are *entirely different in the essential points in controversy, and therefore not applicable.*

In the *Aspinwall* v. *Commissioners of Co. of Daviess*, *supra*, the constitutional prohibition is that "No county shall subscribe for stock in any incorporated company *unless the same be paid for at the time of such subscription*," 22 How. 364-380.

In *Wadsworth* v. *Supervisors*, 102 United States, 537, the constitutional prohibition is: "No county shall subscribe for stock in any incorporated company *unless the same be paid for at the time of such subscription; nor shall any county loan its* *credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company.*"

Both of these constitutional prohibitions *absolutely forbid the subscribing for stock to any incorporated company* UNLESS PAID FOR AT THE TIME OF THE SUBSCRIPTION.

The constitutional prohibition in Illinois applicable to the case at bar, *in its proviso* lifts the questions at issue entirely outside of any constitutional prohibition, and this case cannot therefore be affected at all by it, either in reference to the power of Concord town to create a debt, as it did, or to rescind its vote of Nov. 20, 1869, by that of June 30, 1870.

The *proviso*, in the prohibitory amendment of 1870, to the constitution which is applicable to the case at bar, and must control on that subject, is in the words and figures following, to-wit:

"*Provided*, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscription *where the same has been authorized under existing laws, by a vote of the people of such municipalities prior to such adoption:*" (Brief p. 36).

There is no question about the right of the electors of the town of Concord to vote just as they did Nov. 20, 1869, *unless prohibited by the constitutional amendment of* 1870, that went into effect July 2, 1870. This vote was November 20, 1869, and clearly, and fully, and absolutely excepted in the *proviso, supra.* The language used is *subscription*, in the proviso, and in the call for the election, and minutes of the meeting, (Record p. 12) it is to *donate*, but we have seen that there is no difference in law between these terms of *subscription and donation*, under the constitution of Illinois, that they are interchangeable, and of the same force and effect.

Therefore the argument in *Aspinwall* v. *Commissioners of county of Daviess* and *Wadsworth* v. *Supervisors*, cannot be invoked or made in any manner whatever applicable to the case at bar

In counsel's brief, pp. 43-48, reference is made to a large number of cases in which he argues that the *power to determine when* the bonds were to be issued, or the conditions precedent were complied with, was left in the discretion of the officials who were to act.

An examination of these cases will show that the officials were no more *authorized to determine* when to issue the bonds, or when conditions precedent had been complied with, than the supervisor and clerk in the case at bar. In fact the authority given them is as broad as language can make it. The act of March 7, 1867, Sec. 2, is as follows:

> "The authorities of said townships, towns, or cities, respectively, are hereby authorized and required to levy and collect a tax, *and make such provisions as may be necessary and proper for the prompt payment of the appropriation under the provisions of this law.*" (Record, p. 16.)

Under the last clause of the above it will be seen that the supervisor and clerk (who, as we have shown, *supra*, are the town authorities for all such purposes), had full power *to make such provisions as may be necessary*, etc. This gives full *discretionary power* for them to act on their best judgment for the town they represented. They were especially named for such a purpose, and if they deemed it necessary and proper to make prompt payment of the debt contracted by the vote of Nov. 20, 1869, by the issue of the bonds in question, they had ample power to do so; and being so designated, and also by virtue of their office, they not only had a right to make the certificate and entering on the town records, as they did, that conditions precedent had been complied with before the issue of the bonds.

If, as counsel claim, the *electors are the town authorities, then the electors would have to meet and levy and collect a tax,* demanded in the first clause of this sec. 24, *supra,* which would be a ridiculous absurdity, and yet the act must be interpreted as a whole, and *township authorities* have the same authority to act in the last clause as the first, and are the same parties, to-wit: the supervisors and clerk.

Block v. *Commissioners,* 99 U. S. 686.

THE VOTE TO SUBSCRIBE OR DONATE, CREATES THE DEBT.

The supervisor and town clerk in *no sense created or made the liability.* They only issue evidences of the debt. The debt was created and the liability made by the electors Nov. 20, 1859, when they voted to donate $25,000 to the railroad. In *Schaeffer* v. *Bonham,* 95 Ill. 378, the Court say:

> "The vote to create the debt, if authorized by law, and had in pursuance of law, would have been *the essential act to create the debt.*"
>
> *Harter* v. *Kernochan,* 103 U. S. 573.

There is no question but that the vote *was authorized by law, and held in pursuance of law,* in the case at bar.

Again, in *People* v. *Logan Co.,* 63 Ill. 388, the language of the court is:

> "If the citizens did consent, as claimed, knowing the law would compel the subscription, *it would be their act,* and not alone the act of the law. They knew it was compulsory and not discretionary, if a majority was legally cast therefor. *It cannot, in any sense, be said that such a vote would be to compel the county to create a debt against the wishes of the citizens.*"

On the construction of the constitution of 1848, referred to by counsel, we cannot do better than cite the cases of *County of Livingston* v. *Darlington,* 101 U. S. 407, and *Roberts* v. *Bolles,* *Ib.* 119, where this court review that question and the attitude of the State Supreme Court, and overrule many of the cases he cites.

Subscriptions and donations to the stock of railroads, made under existing laws granting the authority prior to July 2, 1870, are not effected by the prohibitory amendment of the conditions of 1870.

Under this head, in addition to what was said in our first brief, I desire to cite—

County of Randolph v. *Post*, 93 U. S. 502.

County of Moultrie v. *Rockingham Savings Bank*, 92 U. S. 631.

Town of Concord v. *Portsmouth Savings Bank*, *Ib.* 625.

The People v. *Logan County*, 63 Ill. 377.

Fairfield v. *County of Gallatin*, 100 U. S. 47.

C. & I. R. Co. et al. v. *Pickering et al.*, 74 Ill. 279.

Respectfully submitted.

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